Marcus J. Jackson (SBN 205792)
Attorney at Law
751 Center Dr., Suite 108-456
San Marcos, CA 92069

David M. Arbogast (SBN 167571)
David@SpiroMoss.com
Ira Spiro (SBN 67641)
Ira@SpiroMoss.com
SPIRO MOSS BARNESS LLP
11377 W. Olympic Boulevard, Fifth Floor
Los Angeles, CA 90064-1683
Phone: (310) 235-2468; Fax: (310) 235-2456

Jeffrey K. Berns (SBN 131351)
jberns@jeffbernslaw.com
LAW OFFICES OF JEFFREY K. BERNS
19510 Ventura Boulevard, Suite 200
Tarzana, California 91356
Phone: (818) 961-2000; Fax: (818) 867-4820

Paul R. Kiesel (SBN 119854)
kiesel@kbla.com
Patrick DeBlase (SBN 167138)
deblase@kbla.com
Michael C. Eyerly (SBN 178693)
eyerly@kbla.com
KIESEL BOUCHER LARSON LLP
8648 Wilshire Boulevard
Beverly Hills, California 90211
Phone: (310) 854-4444
Fax: (310) 854-0812

Attorneys for Plaintiff and all others Similarly Situated

FILED
08 JAN 15 PM 3:23
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: DEPUTY

'08 CV 0090 LAB RBB

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF DISTRICT OF CALIFORNIA

DOREEN E. CHRISTIAN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

AMERICAN STERLING BANK, and DOES 1 through 10 inclusive,

Defendants.

CASE NO. ____________________

CLASS ACTION COMPLAINT FOR:

(1) Violations of the Truth in Lending Act, 15 U.S.C. §1601, *et seq*;

(2) Violation of Bus. & Prof. Code §17200, *et seq*. - "Unlawful" Business Practices (TILA);

(3) Fraudulent Omissions;

(4) Violation of Bus. & Prof. Code §17200, *et seq*. – "Unfair" and "Fraudulent" Business Practices;

(5) Breach of Contract;

(6) Breach of the Covenant of Good Faith and Fair Dealing; and

(7) Violation of Bus. & Prof. Code §17200, *et seq*. – "Unlawful" Business Practices (Fin. Code § 22302)

JURY TRIAL DEMANDED

Plaintiff, DOREEN E. CHRISTIAN, individually and on behalf of all others similarly situated alleges as follows:

I.

INTRODUCTION

1. This is an action pursuant to the Truth in Lending Act ("TILA"), 15 U.S.C. §1601, *et seq.,* California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200, *et seq.,* and other statutory and common law in effect. Plaintiff, DOREEN E. CHRISTIAN, individually, and on behalf of all others similarly situated, brings this action against Defendant, AMERICAN STERLING BANK, and DOES 1-10 (collectively "Defendant"), based, in part, on Defendant's failure to clearly and conspicuously disclose to Plaintiff and the Class Members, in Defendant's Option Adjustable Rate Mortgage ("ARM") loan documents, and in the required disclosure statements, accompanying the loans, (i) the actual interest rate on the note(s) (12 C.F.R. § 226.17); (ii) that payments on the notes at the teaser rate will result in negative amortization and that the principle balance will increase (12 C.F.R. § 226.19); and (iii) that the initial interest rate provided was discounted and does not reflect the actual interest that Plaintiff and the Class members would be paying on the Note(s).

II.

THE PARTIES

2. Plaintiff, DOREEN E. CHRISTIAN ("Plaintiff") is, and at all times relevant to this Complaint was, an individual residing in Carlsbad, California. On or about September 11, 2006, Plaintiff refinanced her existing home loan and entered into an Option ARM loan agreement with Defendant. The Option ARM loan was secured by Plaintiff's primary residence. Attached hereto as Exhibit 1 is a true and correct copy of the Note and Truth and Lending Disclosure Form pertinent to this action.

3. Defendant AMERICAN STERLING BANK was and is a business organization form unknown. Plaintiffs are informed and believe and thereupon allege that Defendant AMERICAN STERLING BANK is a corporation; and that Defendant AMERICAN STERLING BANK is a

partnership. At all relevant times hereto AMERICAN STERLING BANK was and is engaged in the business of promoting, marketing, distributing and selling the Option ARM loans that are the subject of this Complaint. AMERICAN STERLING BANK transacts business in San Diego County, California and at all relevant times promoted, marketed, distributed, and sold Option Arm loans throughout the United States, including San Diego County, California. AMERICAN STERLING BANK has significant contacts with San Diego County, California, and the activities complained of herein occurred, in whole or in part, in San Diego County, California.

4. Defendant, AMERICAN STERLING BANK, and DOES 1 through 10, shall hereinafter be referred to collectively as "Defendant."

5. At all times mentioned herein, Defendants, and each of them, were engaged in the business of promoting, marketing, distributing, and selling the Option ARM loans that are the subject of this Complaint, throughout the United States, including San Diego County, California.

6. Plaintiff is informed, believes, and thereon alleges, that each and all of the aforementioned Defendants are responsible in some manner, either by act or omission, strict liability, fraud, deceit, fraudulent concealment, negligence, respondeat superior, breach of contract or otherwise, for the occurrences herein alleged, and that Plaintiff's injuries, as herein alleged, were proximately caused by the conduct of Defendants.

7. Plaintiff is informed, believes, and thereon alleges, that at all times material hereto and mentioned herein, each of the Defendants (both named and DOE defendants) sued herein were the agent, servant, employer, joint venturer, partner, division, owner, subsidiary, alias, assignee and/or alter-ego of each of the remaining Defendants and were at all times acting within the purpose and scope of such agency, servitude, joint venture, division, ownership, subsidiary, alias, assignment, alter-ego, partnership or employment and with the authority, consent, approval and ratification of each remaining Defendant.

8. At all times herein mentioned, each Defendant was the co-conspirator, agent, servant, employee, assignee and/or joint venturer of each of the other Defendants and was acting within the course and scope of said conspiracy, agency, employment, assignment and/or joint venture and with the permission and consent of each of the other Defendants.

///

9. Plaintiff is informed, believes, and thereon alleges, that Defendants, AMERICAN STERLING BANK and DOES 1-10, and each of them, are, and at all material times relevant to this Complaint, performed the acts alleged herein and/or otherwise conducted business in California. Defendants, and each of them, are corporations or other business entities, form unknown, have, and are doing business in this judicial district.

10. Plaintiff is informed, believes, and thereon alleges, that DOES 1 through 10, inclusive, are securitized trusts, equity funds, collateralized debt obligations (CDO), CDO underwriters, CDO trustees, hedge funds or other entities that acted as additional lenders, loan originators and/or are assignees to the loans which are the subject of this action. Plaintiff will seek leave of Court to replace the fictitious names of these entities with their true names when they are discovered by herein.

11. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants DOES 1 through 10, inclusive, and each of them, are unknown to Plaintiff at this time, and Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff alleges, on information and belief, that each Doe defendant is responsible for the actions herein alleged. Plaintiff will seek leave of Court to amend this Complaint when the names of said Doe defendants have been ascertained.

12. Plaintiff is informed, believes, and thereon alleges, that at all times relevant during the liability period, that Defendants, and each of them, including without limitation those Defendants herein sued as DOES, were acting in concert or participation with each other, or were joint participants and collaborators in the acts complained of, and were the agents or employees of the others in doing the acts complained of herein, each and all of them acting within the course and scope of said agency and/or employment by the others, each and all of them acting in concert one with the other and all together.

III.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to 15 U.S.C § 1601 *et seq.* and 28 U.S.C. § 1331.

14. This Court has personal jurisdiction over the parties in this action by the fact that Defendants are either individuals who reside in this District within California or are corporations duly

licenced to do business in California.

15. Venue is proper within this District and Division pursuant to 28 U.S.C. §1391(b) because a substantial part of the events and omissions giving rise to the claims occurred in this district, and because there is personal jurisdiction in this district over the named Defendant because it regularly conducts business in this judicial district.

IV.

FACTS COMMON TO ALL CAUSES OF ACTION

16. AMERICAN STERLING BANK ("Defendant") sells a variety of home loans. The Option ARM or adjustable rate mortgages are the loans that are the subject of this Complaint. At all times relevant during the liability period, Defendant maintained offices in San Diego, Temecula, Foothill Ranch and Sacramento, California.

17. The instant action arises out of residential mortgage loan transactions in which Defendant failed to disclose pertinent information in a clear and conspicuous manner to Plaintiff and the Class members, in writing, as required by law.

18. This action also concerns Defendant's unlawful, fraudulent and unfair business acts or practices. Defendant engaged in a campaign of deceptive conduct and concealment aimed at maximizing the number of consumers who would accept this type of loan in order to maximize Defendant's profits, even as Defendant knew their conduct would cause many of these consumers to lose their homes through foreclosure.

19. Plaintiff, along with thousands of other similarly situated consumers, were sold an Option ARM home loan by Defendant. The Option ARM loan sold to Plaintiff and the Class is a deceptively devised financial product. The loan has a variable rate feature with payment caps. The product was sold based on the promise of a low fixed payment based on a low listed interest rate, when in fact Plaintiff and the Class were charged a different, much greater interest rate than promised. Further, Defendant failed to disclose, and by omission, failed to inform Plaintiff of the fact that Defendant's Option ARM loan was designed to, and did, cause negative amortization to occur. Further still, once lured into these loans, consumers cannot easily extricate themselves from these loans because Defendant's included in

these loans a stiff and onerous prepayment penalty making it extremely difficult, if not impossible, for borrowers to extricate themselves from these loans.

20. The Option ARM loan Defendant sold to Plaintiff and the Class violates the Truth In Lending Act (TILA). TILA is supposed to protect consumers; it mandates certain disclosures be made by lenders to borrowers concerning the terms and conditions of their home loans. Defendants failed to make these disclosures in connection with the Option ARM loan sold to Plaintiff and the Class.

21. At all times relevant, Defendant sold their Option ARM loan product to consumers, including Plaintiff, in a false or deceptive manner. Defendant's loan documents indicated that the loan would have a very low payment for the first three (3) to five (5) years and there is no indication of negative amortization. In furtherance of their scheme, Defendant listed a low "teaser" rate in the Note(s) and a low corresponding payment schedule in the TILA Disclosure Statement (hereafter "TILDS") to lure Plaintiff and the Class members into purchasing Defendant's Option ARM loan product. However, the low "teaser" rate was illusory, a false promise. Plaintiff and others similarly situated did not receive the benefit of the low rate promised to them. Once signed on to Defendant's loan, the interest rate applied to Plaintiff's and Class members' loans was immediately and significantly increased.

22. Plaintiff and others similarly situated were consumers who applied for a mortgage loan through Defendant. During the loan application process, in each case, Defendant intended Plaintiff and the Class members to believe that in entering these loan contracts that they would be able to have low mortgage payments. Defendant initiated this scheme in order to maximize the amount of the loans it sold to consumers and to maximize it's profits.

23. Based on the Defendant's representations, and the misconduct alleged herein, Plaintiff and the Class members agreed to finance their primary residence through Defendant's Option ARM loan. Plaintiff and the Class members were sold a home loan with a low interest rate of between 1% and 3.0% interest rate (the "teaser" rate), and a corresponding payment schedule based on that the interest rate for the first three (3) to five (5) years of the loan. Defendants also represented to Plaintiff, and Plaintiff reasonably believed, that if she made payments based on the promised low interest rate, which were the payments reflected in the written payment schedule provided to her by Defendant, that the loan would be a no negative amortization home loan and that Plaintiff's payments would be applied to both

principal and interest.

24. After, the purported three (3) - five (5) year fixed interest period, Plaintiff and the Class members reasonably believed, based on the representations contained in the documents Defendant provided to Plaintiff and the Class members, that they would be able to refinance their loan and get a new loan before their scheduled payments increased. However, the payment schedule provided by Defendants failed to disclose, and by omission, failed to inform these consumers that due to the negative amortization that was purposefully built into these loans, Plaintiff and the Class members would be unable to refinance their homes as there would be little or no equity left to refinance.

25. Plaintiff believed these facts to be true because that is what the Defendants intended consumers to believe. Defendant aggressively marketed their product as a fixed, low interest home loan. Defendant knew that if marketed and sole in such a manner, their Option ARM loan product would be a hugely popular and profitable product for them. Defendant also knew, however, that they were selling their product in a false and deceptive manner. While Defendant trumpeted their low rate loans to the public, Defendant knew their promise of a low interest was a mirage.

26. In fact, Defendant's Option ARM loan possessed a low, fixed ***payment*** but not a low, fixed interest rate. Unbeknownst to Plaintiff and the Class members, the actual interest rate they were charged on their loans was not fixed, was not the low teaser interest rate stated in the loan documentation and was in fact considerably higher than going market rates. And, after purchasing Defendant's Option ARM loan product, Plaintiff and Class members did not actually receive the benefit of the low teaser rate at all or in some cases, at best, received that teaser rate for only a single month. Immediately, thereafter, Defendant in every instance and for every loan, secretly increased the interest rate they charged consumers. The now-increased interest charges incurred by Plaintiff and the Class members, over and above the fixed interest payment rate, were added to the principal balance on their home loans in ever increasing increments, substantially reducing the equity in these borrowers' homes.

27. In stark contrast to this reality, Defendant, through the standardized loan documents they created and supplied to Plaintiff, stated that negative amortization was only a mere possibility. Defendant concealed and failed to disclose the fact that the loan, as presented and designed, in fact, guaranteed negative amortization. Defendant failed to disclose and omitted the objectively material fact

that negative amortization was absolutely certain to occur if consumers followed the payment schedule listed by Defendant in the TILDS. This information was objectively material and necessary for consumers to make an informed decision because this would have revealed that the loan's principal balance would increase if the payment schedule was followed, thereby rendering it impossible to refinance the loan at or around the time the prepayment penalty expired and/or by the time the interest and payment rates re-set. In this respect, Defendant utterly failed to place any warning on the Truth and Lending Disclosure Form about negative amortization.

28. At all times relevant, once Plaintiff and the Class members accepted Defendant's Option ARM loan contract, they had no viable option by which to extricate themselves because these Option ARM loan agreements included a draconian pre-payment penalty for a period of up to three years.

29. The Option ARM loans sold by Defendant all have the following uniform characteristics:

(a) There is an initial low interest rate or "teaser" rate that was used to entice the Plaintiff into entering into the loan. The rate offered was typically 1%-3%;

(b) The loan has with it a corresponding low payment schedule. The documentation provided intended to misleadingly portray to consumers that the low payments for the first three (3) to five (5) years were a direct result of the low interest rate being offered;

(c) The initial payments in the required disclosures were equal to the low interest rate being offered. The purpose was to assure that if someone were to calculate what the payment would be at the low offered interest rate, it corresponded to the payment schedule. This portrayal was intended to further mislead consumers into believing that the payments were enough to cover all principal and interest;

(d) The payment has a capped annual increase on the payment amount; and

(e) The loan includes a prepayment penalty preventing consumers from securing a new loan for a period of up to three (3) years.

30. Defendant uniformly failed to disclose, and by omission, failed inform consumers, including Plaintiff and the Class members, in a clear and conspicuous manner that the fixed "teaser" rate offered by Defendants was actually never applied to their loans, or, at best, was only applied for thirty (30) days. Thereafter, the true interest charged on the loans was significantly higher than the promised

rate.

31. Defendant uniformly failed to disclose and by omission failed to inform consumers, including Plaintiff and the Class members, that the payments set forth in Defendant's schedule of payments were insufficient to cover the actual amount they were being charged for the loan, and that this was, in fact, a loan that would cause the Plaintiff's and the Class members to lose the equity they have in their home.

32. Defendant uniformly failed to disclose and by omission failed to inform consumers, including Plaintiff and the Class members, that when the principal balance increased to a certain level, they would no longer have the option of making the fixed interest payment amount.

33. Disclosing whether a payment will result in negative amortization is of critical importance to consumers. If the disclosed payment rate is insufficient to pay both principle and interest, one of the consequences of negative amortization is a loss of equity. Defendants are and at all times relevant hereto have been aware that clear and conspicuous disclosure of the actual interest rate and a payment rate sufficient to avoid negative amortization and the concomitant loss of equity is extremely important material information.

34. At all times relevant, Defendant, and each of them, knew or should have known, or were reckless in not knowing, that: (i) the payment rate provided to Plaintiff and the Class members were insufficient to pay both interest and principle; (ii) that negative amortization was certain to occur if Plaintiff and the Class members made payments according to the payment schedule provided by Defendant; and (iii) that loss of equity and/or loss of Plaintiff's and the Class members residence was substantially certain to occur if Plaintiff and the Class members made payments according to the payment schedule provided by Defendant.

35. In spite of its knowledge, Defendant sold its Option ARM loans as product that would provide Plaintiff and the Class members with a low payment and interest rate for the first three (3) to five (5) years of the loan, and at all times relevant, failed to disclose and/or concealed by making partial representations of material facts when Defendant had exclusive knowledge of material facts that negative amortization was certain to occur. This concealed and omitted information was not known to Plaintiff and the Class members and which, at all times relevant, Defendant failed to disclose and/or

actively concealed by making such statements and partial, misleading representations to Plaintiff and all others similarly situated. Because the ARM loans did not provide a low interest rate for the first three (3) to five (5) years of the Note and the payment disclosed by Defendant was insufficient to pay both principle and interest, negative amortization occurred.

36. The true facts about Defendant's ARM loans is that they do not provide the low interest rate promised, and are certain to result in negative amortization.

37. Disclosure of a payment rate that is sufficient to pay both principle and interest on the loans is of critical importance consumers. If the disclosed payment rate is insufficient to pay both principle and interest, one of the consequences is that negative amortization or loss of equity will occur. Defendant are and at all times relevant hereto have been aware that the ability of the disclosed payment rate to pay both principle and interest so as to avoid negative amortization is one of the most important terms of a loan.

38. To this day, Defendant continues to conceal material information from consumers, and the public, that: (i) the payment provided to Plaintiff and the Class members is and was insufficient to pay both principle and interest; (ii) if the disclosed payment schedule is followed, Plaintiff and the Class members will suffer negative amortization; and (ii) loss of equity and/or possession of the property is substantially certain to occur if the disclosed payment schedule is followed. Nevertheless, Defendant has refused to clearly and conspicuously disclose to Plaintiff and the Class members the existence of this important material information and the injury caused thereby, including but not limited to the loss of equity.

39. In the end, the harm caused by Defendant's failures to disclose and omissions, as alleged herein, grossly outweighs any benefit that could be attributed to them.

40. Knowing the truth and motivated by profit and market share, Defendant has knowingly and willfully engaged in the acts and/or omissions to mislead and/or deceive Plaintiff and others similarly situated.

41. The Option ARM loans have resulted and will continue to result in significant loss and damage to the Class Members, including but not limited to the loss of equity these consumers have or had in their homes.

42. The facts which Defendant misrepresented and concealed, as alleged in the preceding paragraphs, were material to the decisions about whether to purchase the Option ARM loans in that Plaintiff and others similarly situated would not have purchased these loans but for Defendant's unlawful, unfair, fraudulent and/or deceptive acts and/or practices as alleged herein.

43. Defendant engaged in the unlawful, unfair, fraudulent, untrue and/or deceptive marketing scheme to induce consumers to purchase their ARM loans.

44. Defendant's unlawful, unfair, fraudulent, untrue and/or deceptive acts and/or practices were committed with willful and wanton disregard for whether or not Plaintiff or others similarly situated would receive a home loan that would actually provide the low interest and payment rate for the first three (3) to five (5) years of the loan sufficient to pay both principle and interest.

45. Upon information and belief, and at all times relevant during the liability period, Defendant possessed full knowledge and information concerning the above facts about the ARM loans, and otherwise marketed and sold these ARM loans throughout the United States, including the State of California.

V.

CLASS ACTION ALLEGATIONS

46. Plaintiff brings this action on behalf of herself, and on behalf of all others similarly situated (the "Class") pursuant to Federal Rule of Civil Procedure, Rules 23(a), and 23(b), and the case law thereunder. The classes Plaintiff seeks to represent are defined as follows:

> **The California Class**: All individuals who, within the four year period preceding the filing of Plaintiff's Complaint through the date notice is mailed to the Class, received an Option ARM loan through Defendant on their primary residence located in the State of California. Excluded from the California Class are Defendant's employees, officers, directors, agents, representatives, and their family members; and

> **The National Class**: All individuals in the United States of America who, within the four year period preceding the filing of Plaintiff's complaint through the date notice is mailed to the Class, received an Option ARM loan through Defendant on their primary residence located in the United States of America. Excluded from the National Class are Defendant's employees, officers, directors, agents, representatives, and their family members.

An appropriate sub-Class exists for the following Class Members:

> All individuals in the United States of America who, within the three year period preceding the filing of Plaintiff's complaint through the date notice is mailed to the Class, received an Option ARM loan through Defendant on their primary residence located in the United States of America. Excluded from the National sub-Class are Defendant's employees, officers, directors, agents, representatives, and their family members.

Plaintiff reserves the right to amend or otherwise alter the Class definitions presented to the Court at the appropriate time, or propose or eliminate sub-Classes, in response to facts learned through discovery, legal arguments advanced by Defendant or otherwise.

47. Numerosity: The Class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of Class members is unknown at this time, Plaintiff is informed and believes that the entire Class or Classes consist of approximately tens of thousands of members.

48. Commonality: Common questions of law or fact are shared by the Class members. This action is suitable for class treatment because these common questions of fact and law predominate over any individual issues. Such common questions include, but are not limited to, the following:

(1) Whether Defendant's acts and practices violate the Truth in Lending Act, 15 U.S.C. §1601, et seq;

(2) Whether Defendant's conduct violated 12 C.F.R. § 226.17;

(3) Whether Defendant's conduct violated 12 C.F.R. § 226.19;

(4) Whether Defendant engaged in unfair business practices aimed at deceiving Plaintiff and the Class members before and during the loan application process;

(5) Whether Defendant, by and through their officers, employees, and agents failed to disclose that the interest rate actually charged on these loans was higher than the rate represented and promised to Plaintiff and the Class members;

(6) Whether Defendant, by and through their officers, employees and agents concealed, omitted and/or otherwise failed to disclose information they were mandated to disclose under TILA;

/ / /

(7) Whether Defendant failed to disclose the true variable nature of interest rates on adjustable rate mortgage loans and adjustable rate home equity loans;

(8) Whether Defendant failed to properly disclose the process by which negative amortization occurs, ultimately resulting in the recasting of the payment structure over the remaining lifetime of the loans;

(9) Whether Defendant's failure to apply Plaintiff's and the Class members' payments to principal as promised in the form Notes constitutes a breach of contract, including a breach of the covenant of good faith and fair dealing;

(10) Whether Defendant's conduct in immediately raising the interest rate on consumers' loans so that no payments were applied to the principal balance constitutes breach of the covenant of good faith and fair dealing;

(11) Whether Defendant's marketing plan and scheme misleadingly portrayed or implied that these loans were fixed rate loans, when Defendant knew that only the periodic payments were fixed (for a time) but that interest rates were not, in fact, "fixed;"

(12) Whether the terms and conditions of Defendant's Option ARM home loan are unconscionable;

(13) Whether Plaintiff and the Class are entitled to damages;

(14) Whether Plaintiff and the Class members are entitled to punitive damages; and

(15) Whether Plaintiff and the Class members are entitled to rescission.

49. Typicality: Plaintiff's claims are typical of the claims of the Class members. Plaintiff and the other Class members were subjected to the same kind of unlawful conduct and the claims of Plaintiff and the other Class members are based on the same legal theories.

50. Adequacy: Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the other members of the Class Plaintiff seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation and Plaintiff intends on prosecuting this action vigorously. The interests of members of the Class will be fairly and adequately protected by Plaintiff and her counsel.

51. Ascertainable Class: The proposed Classes are ascertainable in that the members can be identified and located using information contained in Defendant's mortgage lending records.

52. This case is brought and can be maintained as a class action under Rule 23(b)(1), 23(b)(2), and 23(b)(3):

(a) Risk of Inconsistent Judgments: The unlawful acts and practices of Defendant, as alleged herein, constitute a course of conduct common to Plaintiff and each Class member. Prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendant and/or substantially impair or impede the ability of individual Class members to protect their interests;

(b) Injunctive and/or Declaratory Relief to the Class is Appropriate: Defendant, and each of them, have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief or corresponding declaratory relief with respect to the Class as a whole appropriate; and

(c) Predominant Questions of Law or Fact: Questions of law or fact common to the Class members, including those identified above, predominate over questions affecting only individual Class members (if any), and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Class action treatment will allow a large number of similarly situated consumers to prosecute their common claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require. Further, an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudicating each such individual lawsuit would be substantial.

///

///

///

VI.

FIRST CAUSE OF ACTION

(Violations of Truth in Lending Laws, 15 U.S.C. §1601, *et seq.*,

(Against All Defendants)

53. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

54. 15 U.S.C. §1601, *et seq.*, is the Federal Truth in Lending Act ('TILA"). The Federal Reserve Board of Governors implements the Federal Truth in Lending Act through Regulation Z (12 C.F.R. §226) and its Official Staff Commentary. Compliance by lenders with Regulation Z became mandatory October 1, 1982. Likewise, Official Staff Commentary issued by the Federal Reserve Board is also binding on all lenders.

55. The purpose of TILA is to protect consumers. This is stated in 12 C.F.R. § 226.1, which reads:

> **§226.1 Authority, purpose, coverage, organization, enforcement and liability. . .**
>
> (b) Purpose. The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and costs. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling . . .

56. Reg. Z also mandates very specific disclosure requirements regarding home loans with which lenders, including Defendant, must comply:

> **§ 226.17. General disclosure requirements.**
>
> (a) Form of disclosures. (1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under § 226.18.

///

57. The purpose of the TILA is to assure a meaningful disclosure of credit terms so that the borrowers will be able to compare more readily the various credit terms available to them and avoid the uninformed use of credit and to protect the consumer against inaccurate and unfair credit billing practices.

58. Defendant's Option ARM loan violates TILA because Defendant failed to comply with the disclosure requirements mandated by Regulation Z and Official Staff Commentary issued by the Federal Reserve Board. Defendant failed in a number of ways to clearly, conspicuously and/or accurately disclose the terms of the Option ARM loan to Plaintiff as Defendant were required to do under TILA. These violations are apparent on the face of the TILA Disclosure Forms.

59. The TILA violations committed by Defendant are more specifically detailed as follows:

A. Defendant's Failure to Clearly and Conspicuously Disclose The Actual Interest Rate Violates Truth in Lending Laws

60. 12 C.F.R. § 226.17 and 12 C.F.R. § 226.19 require the lender to make disclosures concerning the interest rate in a clear and conspicuous manner. Further, a misleading disclosure is as much a violation of TILA as a failure to disclose at all. Defendant failed to meet the disclosure mandates required of them concerning the interest rate Defendant actually applied to Plaintiff's and Class members' loans, as well as the interest Defendant actually charged Plaintiff and the Class members.

61. Defendant's disclosure in the Promissory Note concerning the interest rate is, at best, unclear and inconspicuous. At worst, it is intentionally deceptive. In either instance, it is certainly different than the interest rate set forth by Defendant in the TILD. The interest rate information set forth by Defendant in the Note conflicts with the interest rate information set forth by Defendant in the TILA Disclosure Form.

62. The interest rate set forth in the Note is the teaser rate that Defendant, in fact, applied to the loan for a single month. However, at all times relevant during the liability period, Defendant did not make it clear in the Note(s) or TILDS that this low promised rate (the same rate upon which Defendant base the written payment schedule provided to Plaintiff) is only offered for the first thirty (30) days of the loan. In furtherance of their scheme, Defendant employed the most convoluted, confusing and

circuitous methodology in describing the interest rate. In particular, Defendant used terms like "may" when discussing potential interest rate increases, when in fact it was an absolute certainty the interest rate listed would only be provided for the first thirty days of the loan, and would be raised when the first payment was due. In one part of the Note, Defendant states that the promised low interest rate is the rate until the "change date." A description of the change date is found in another part of the Note. The convoluted and disjointed method employed by Defendant to provide this information to consumers makes it extremely difficult, if not impossible, for anyone to determine that, in fact, that the change date corresponds to the very first monthly payment Plaintiff and the Class members made on their loans.

63. The convoluted language used by Defendant to disclose the interest rate on Plaintiff's and the Class members loans is not clear and conspicuous. Rather, the disclosures used by Defendant were purposefully unclear and meant to mislead and deceive Plaintiff and the Class members. In particular, it is virtually impossible to discern when Plaintiff and the Class members would receive the low interest rate they were promised, if, in fact, it can be determined at all. And, the truth is that Plaintiff and the Class members never received the low interest rate, or in some cases received it for only thirty days. Defendant's promise of a low interest rate is and was wholly illusory and the deception, as alleged herein, was uniformly practiced on Plaintiff and all Class members by Defendant to facilitate sales of their loans to consumers.

64. The Note also sets forth the amount of Plaintiff's and Class members' initial monthly payments. That monthly payment amount is equal to what the payment would be if the listed low interest rate promised to Plaintiff by Defendant was true and was, in fact, applied to the principal balance on the loans. This is a further deception committed by Defendant, because the real interest rate charged on the loans by Defendant is much higher than the low interest rate promised to Plaintiff and Class members. Thus, the payment amount provided by Defendant was intended to and did deceive consumers into falsely believing that they would, in fact, receive the teaser interest rate promised to them.

65. The TILDS is also confusing and deceptive for much the same reason. It shows the scheduled payments for the first three (3) to five (5) years of the loan as being based on the low "teaser" rate Plaintiff and Class members were promised, with the agreed 7.5% annual increase in the payment

amount. In truth, however, this payment schedule has no real relation to the interest rate Defendant actually charged Plaintiff and the Class members on their loans.

66. At all times relevant during the liability period, Defendant failed to clearly, conspicuously and accurately disclose the actual interest rate applied to Plaintiff's and Class members' loans. Defendant also failed to disclose, and by omission, failed to inform Plaintiff and the Class members that the payment amounts listed in the payment schedule did not include any amount towards the principle on the loan and were, in fact, insufficient to pay all of the interest accuring. Based on the payment schedule listed in the Note and TILDS, Plaintiff and the Class members reasonably believed that the payments would be sufficient to meet the loan obligations in the Note(s). Thus, Plaintiff and the Class members reasonably believed that the low rate promised to them would be applied to their loans. However, the true fact is that the payment schedule provided by Defendant did not pay any principal on the loan at all and only included a partial payment towards the interest Defendant charged Plaintiff and the Class members for these loans.

67. At all times relevant during the liability period, Defendant failed to clearly, conspicuously and accurately disclose in the Note and TILDS a payment amount that was sufficient to pay both principle and interest. In particular, the Note(s) state that the payments will be applied to "principle and interest" and Plaintiffs reasonably believed that if they made the payments according to Defendant's payment schedule, the payments would, in fact, be paying off both principal and interest. However, the true fact is that the payment amounts stated in Defendant payment schedule did not include any principal on the loans at all and were only a partial payment of the interest Defendants were charging on these loans.

68. At all times relevant during the liability period, Defendant failed to disclose, and by omission, failed to inform consumers that if they followed the payment schedule provided by Defendants, their payments will not be applied to principle at all and were not sufficient enough to cover all of the interest Defendant charged on the loan(s).

/ / /

/ / /

/ / /

B. Defendant's Failure to Clearly and Conspicuously Disclose Negative Amortization Violates the Truth in Lending Laws

69. 12 C.F.R. § 226.19 sets forth additional specific disclosure requirements for residential home loans:

> **§ 226.19. Certain residential mortgage and variable-rate transactions.**
>
> . . .
>
> (b) Certain variable-rate transactions. If the annual percentage rate may increase after consummation in a transaction secured by the consumer's principal dwelling with a term greater than one year, the following disclosures must be provided at the time an application form is provided or before the consumer pays a non-refundable fee, whichever is earlier. . .
>
> (vii) *Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover*. (Emphasis added.)

70. The negative amortization disclosure is required and must be made clearly and conspicuously, and done in a manner that does not obscure its significance. The disclosure must state whether the loan and payments established under the terms dictated by the Defendant is a negative amortizing loan.

71. In 1995, and continuing each time new Official Staff Commentary was issued, the Federal Reserve Board made clear that when the loan was a variable rate loan with payment caps, such as those that are the subject of this lawsuit, that the disclosure requires a definitive statement about negative amortization:

> 12 CFR Part 226
>
> [Regulation Z; Docket No. R-0863]
>
> Monday, April 3, 1995
>
> AGENCY: Board of Governors of the Federal Reserve System.
>
> ACTION: Final rule; official staff interpretation.

"For the program that gives the borrower an option to cap monthly payments, the creditor must fully disclose the rules relating to the payment cap option, including the effects of exercising it (such as **negative amortization occurs** and that the principal balance **will increase**)..." (Found at C.F.R. § 226.19)

72. At all times relevant, statutory and common law in effect make it unlawful for a lender, such as Defendant, to fail to comply with the Federal Reserve Board's Official Staff Commentary as well as Regulation Z and TILA.

73. Defendant sold Plaintiffs and the Class members Option ARM loans which have a variable rate feature with payment caps. Defendant failed to include any reference in the TILDS or in the Note(s) that negative amortization would occur if Plaintiffs and the Class members followed the payment schedule provided by Defendant.

74. In fact, the only place in the Note where Defendant even inferentially reference negative amortization caused Plaintiffs and all other similarly situated reasonable persons to believe that negative amortization is only a mere possibility, rather than an absolute certainty. In fact, these loans were designed in such a way so as to make negative amortization an absolute certainty. And, even when a separate explanation was provided, Defendant omitted the important material fact that these loans and payment schedules would, in fact, guarantee negative amortization.

75. Defendant's statement in the Note(s): "[i]f the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur" was a half-truth and did not alert or inform Plaintiffs that the payment schedule provided by Defendant would absolutely guarantee that negative amortization was going to occur on these loans. Rather, Defendant made it appear that as long as the payments were made according to the schedule listed in the TILDS, that there would be no negative amortization.

76. At all times relevant, Defendant's statement in the Note, TILDS, and any other disclosures they provided, described negative amortization as only a mere possibility, and therefore was misleading and deceptive. In fact, Defendant's Option ARM loan was designed in such a way as to

guarantee negative amortization. TILA demands more than a statement that the payment could be less, or "may" be less, when Defendant knew that the payments were less, and would always be less, than the full amount required to pay both principle and interest.

C. Defendant's Failure to Clearly and Conspicuously Disclose that the Initial Interest Rate is Discounted Violates Truth in Lending Laws

77. As previously stated, the informed use of credit means being able to make decisions, as well as being able to plan an individual's finances. Every month consumers look at their income and budget where their funds must be paid. The biggest investment in one's life is generally that person's home. In fact, it is often referred to as "the American Dream" to own a home.

78. Variable rate loans are based on a "margin" and an "index." The index is often the Prime Rate or the LIBOR exchange rate. The margin is the amount the lender charges over that rate, basically it is the lender's profit on the loan.

79. TILA and Regulation Z require disclosures to be clear and conspicuous so people understand what their obligations are. In particular, when the payment is not based on that index and margin a separate disclosure is required. The disclosure must also inform that interest rate and payment may go up and clearly and conspicuously provide the circumstances under which the rate and payment will increase. Further, the disclosure must inform the borrower what the true cost of the loan is..

80. The Federal Reserve Board established disclosure requirements for variable rate loans. 26 C.F.R. § 226.19 requires a lender to disclose the frequency of interest rate and payment adjustments to borrowers. If interest rate changes will be imposed more frequently or at different intervals than payment changes, a creditor must disclose the frequency and timing of both types of changes.

81. The disclosures required pursuant to 12 C.F.R. § 226.19 are extremely important because Plaintiff and other consumers similarly situated need this information in order to budget their money. They need to know if their house payments are going to go up so that they can plan for it. If the change comes as a surprise, they face a much greater possibility of defaulting on their loans and losing their homes.

82. Here, Defendant states only that the interest rate ***may*** increase in the future. However, an interest rate increase was in fact far more certain than this disclosure led Plaintiff and the Class members

to believe. If Defendant had given the Plaintiff and the Class members the promised low interest rate for any initial period of time, the interest rate was guaranteed to go up even without any change in the index. Thus, the increase in the interest rate on these loans was not just a possibility; it was an absolute certainty and Defendant failed and omitted this material information in their disclosures to Plaintiff and the Class members.

83. Defendant's loan documents state that the interest rate may increase during the term of this transaction if the index increases. This, however, was not the only circumstance that could cause an increase in the interest rate because the disclosed interest rate was discounted.

84. At all times relevant during the liability period, Defendant failed to disclose, and by omission, failed to inform Plaintiff and the Class members that the initial interest rate was discounted, creating the possibility of an increase even when the index did not rise. Due to the initial discounted interest rate being listed at 1% to 3%, the interest rate would increase because the index and margin were between 5% and 8% higher. Even when Defendants did provide a disclosure that stated the initial payment was not based on the index, it did so in a manner that was not clear and conspicuous. Because the loan documents failed to provide this extremely important material information in a clear and conspicuous manner that did not obscure its importance, Defendant disclosure failed to meet the standards mandated under TILA.

85. Defendant failed to disclose to Plaintiff and the Class members that their interest rate was, with 100% certainty, going to increase, regardless of whether or not the index upon which their loans are based changed. As such, Defendant violated TILA and Regulation Z by providing Plaintiff and the Class members with unclear, deceptive and poorly drafted or intentionally misleading disclosures.

D. Defendant's Failure to Disclose the Composite Interest Rate Violates Truth in Lending Laws

86. Defendant provided Plaintiff and Class members with multiple, conflicting interest rates when describing the costs of this loan. On the TILDS Defendant set forth one interest rate, while on the Note, Defendant set forth one or two other, different interest rates.

87. The official staff commentary to 226 C.F.R. § 17(C)(8) states:

Basis of disclosures in variable-rate transactions. The disclosures for a

> variable-rate transaction must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase. For example, in a loan with an initial rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that this rate will increase 5 percentage points. **However, in a variable-rate transaction with a** seller buydown that is reflected in the credit contract, a consumer buydown, or **a discounted or premium rate, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term.** (See the commentary to section 226.17(c) for a discussion of buydown, discounted, and premium transactions and the commentary to section 226.19(a)(2) for a discussion of the redisclosure in certain residential mortgage transactions with a variable-rate feature.)

88. The reason for this requirement is clear. Consumers cannot make informed decisions when they cannot compare the cost of credit to other proposals. It is therefore incumbent upon Defendant to show the composite interest rate in effect so that the borrowers can understand exactly what they will be paying for the loan.

89. A lender violates TILA, Reg. Z and the OTS guidelines by failing to list the composite rate in variable rate loans that have a discounted initial rate. The loan sold to Plaintiff and Class members by Defendant is a variable-rate loan. At all times relevant during the liability period, Defendant listed an interest rate in the Note(s) that, in truth, would only be provided for the first thirty days of a thirty year loan, and would, with one hundred percent certainty, be increased after that first month. Because Defendant failed to clearly and conspicuously disclose the composite annual percentage rate on these loans, and instead listed different interest rates in different places in the documents

provided to consumers, Defendant violated TILA and Regulation Z, and failed to provide disclosures that did not obscure relevant information.

90. As a direct and proximate result of Defendant's violations of TILA, as alleged herein, Plaintiff and the Class members have suffered injury in an amount to be determined at time of trial. If Defendant had not violated TILA and had instead clearly and conspicuously disclosed the material terms of Defendant's Option ARM loan, as alleged herein, Plaintiff and the Class members would not have entered into the home loan contracts which are the subject of this action. Because Defendant failed to make the proper disclosures required under TILA, Plaintiff and the Class members now seek redress in an amount and/or type as proven at time of trial.

D. Defendant's Failure to Clearly and Conspicuously Disclose The Legal Obligation Violates Truth in Lending Laws

91. 12 C.F.R. § 226.17(c)(1) requires that "[t]he disclosures shall reflect the terms of the legal obligation between the parties."

92. Official binding staff commentary on 12 C.F.R. § 226.17(c)(1) requires that: "[t]he disclosures shall reflect the credit terms to which the parties are legally bound as of the outset of the transaction. In the case of disclosures required under § 226.20(c), the disclosures shall reflect the credit terms to which the parties are legally bound when the disclosures are provided."

93. The Official binding staff commentary further states, at 12 C.F.R. § 226.17(c)(1)(2), that "[t]he legal obligation normally is presumed to be contained in the note or contract that evidences the agreement."

94. Official Staff Commentary to 12 C.F.R. § 226.17(c)(1) states that "[i]f a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures."

95. At all times relevant during the liability period, Defendant's Option ARM loans violated 12 C.F.R. § 226.17(c) in that the Note(s) and TILDS did not disclose, and by omission, failed to disclose what Plaintiff's and the Class members' were legally obligated to pay. In particular, the Note(s) charged

these borrowers a much higher monthly amount than what Defendant disclosed. Defendant accomplished this deception by only listing a partial payment in the TILDS, rather than a payment amount that was sufficient to pay what these borrowers were being charged for their loans, and were legally obligated to pay.

96. As a direct and proximate result of Defendant's omissions and failures to clearly and conspicuously disclose Plaintiff's and the Class members legal obligations under the loans, Defendant took the partial payments and secretly added the deficit, each month, to principle, thereby causing negative amortization to occur.

E. Defendant's Failure to Clearly and Conspicuously Disclose the Effect of the Payment Cap on the True Cost of the Loan Violates Truth in Lending Laws

97. The Option ARM loans at issue each contained a variable rate feature with an initial teaser rate with payment caps. The payment cap is a limit on how much the payment may be increased annually. Its purpose is to provide borrowers with a limit on how much their payment can increase from year to year. The loans issued by Defendant had a 7.50% payment cap, which means that a borrower would only see their payment rise each year by a maximum of 7.50%. (i.e. a $1,000 monthly payment in year one, could go to a $1,075 payment in year two.)

98. The Official Staff Commentary to 12 C.F.R. § 226.17(c)(1)(10)(iii) states that "[i]f a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures." Thus, at all times relevant during the liability period, Defendant had a duty to Plaintiffs and the Class members to disclose the effect the payment caps would have on the loans in the TILD.

99. At all times relevant during the liability period, Defendant failed to disclose, and by omission, failed to inform Plaintiff and the Class members that the payment cap would cause hundreds, if not thousands of dollars, each month, to be secretly added to principle.

100. As a direct and proximate result, Defendant failed to disclose, and by omission, failed to inform Plaintiff and the Class members of the effect of the payment cap in violation of 12 C.F.R. § 226.17.

101. WHEREFORE, Plaintiffs and the Class members are entitled to an order declaring that Defendants violated TILA, 15 U.S.C. §1601, et seq., that Plaintiffs and the Class have the right to rescind pursuant to 15 U.S.C. § 1635 and 12 C.F.R. § 226.23, attorneys fees, litigation costs and expenses and costs of suit, and for an order rescinding Plaintiff's individual mortgage and those of any class member desirous of such relief, and for an order awarding other relief as the Court deems just and proper.

VI.

SECOND CAUSE OF ACTION

Violation of California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et. seq.* - "Unlawful" Business Acts or Practices Predicated on Violations of TILA

(Against All Defendants)

102. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

103. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class, and in her capacity as a private attorney general against Defendant for its unlawful business acts and/or practices pursuant to California Business and Professions Code Sections 17200 *et seq*., which prohibits all unlawful business acts and/or practices.

104. Plaintiff asserts these claims as she is a representative of an aggrieved group and as a private attorney general on behalf of the general public and other persons who have expended funds that the Defendant should be required to pay or reimburse under the equitable and restitutionary remedies provided by California Business and Professions Code Sections 17200 *et seq*.

105. The unlawful acts and practices of Defendant alleged above constitute unlawful business acts and/or practices within the meaning of California Business and Professions Code Sections 17200 et seq.

106. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of Business and Professions Code Sections 17200, *et seq.*

///

101. WHEREFORE, Plaintiffs and the Class members are entitled to an order declaring that Defendants violated TILA, 15 U.S.C. §1601, et seq., that Plaintiffs and the Class have the right to rescind pursuant to 15 U.S.C. § 1635 and 12 C.F.R. § 226.23, attorneys fees, litigation costs and expenses and costs of suit, and for an order rescinding Plaintiff's individual mortgage and those of any class member desirous of such relief, and for an order awarding other relief as the Court deems just and proper.

VI.

SECOND CAUSE OF ACTION

Violation of California's Unfair Competition Law, Bus. & Prof. Code § 17200 *et. seq.* - "Unlawful" Business Acts or Practices Predicated on Violations of TILA

(Against All Defendants)

102. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

103. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class, and in her capacity as a private attorney general against Defendant for its unlawful business acts and/or practices pursuant to California Business and Professions Code Sections 17200 *et seq*., which prohibits all unlawful business acts and/or practices.

104. Plaintiff asserts these claims as she is a representative of an aggrieved group and as a private attorney general on behalf of the general public and other persons who have expended funds that the Defendant should be required to pay or reimburse under the equitable and restitutionary remedies provided by California Business and Professions Code Sections 17200 *et seq*.

105. The unlawful acts and practices of Defendant alleged above constitute unlawful business acts and/or practices within the meaning of California Business and Professions Code Sections 17200 et seq.

106. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of Business and Professions Code Sections 17200, *et seq.*

///

107. Defendant's unlawful business acts and/or practice as alleged herein have violated numerous laws and/or regulations and said predicate acts are therefore *per se* violations of §17200, *et seq*. These predicate unlawful business acts and/or practices include Defendant failure to comply with the disclosure requirements mandated by TILA, 15 U.S.C. §1601, *et seq.*, Regulation Z and Official Staff Commentary issued by the Federal Reserve Board. And, as described in more detail above, Defendant also failed in a number of ways to clearly or accurately disclose the terms of the ARM loans to Plaintiff and the Class members as required under TILA.

108. Defendant's misconduct, as alleged herein, gave Defendant an unfair competitive advantage over their competitors.

109. As a direct and proximate result of the aforementioned acts, Defendant received monies and continues to hold the monies expended by Plaintiff and others similarly situated who purchased the ARM loans as described herein.

110. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a constructive trust over, and restitution of, the monies collected and realized by Defendant.

111. The unlawful acts and practices, as fully described herein, present a continuing threat to members of the public to be mislead and/or deceived by Defendant as described herein. Plaintiff and other members of the general public have no other remedy of law that will prevent Defendant's misconduct, as alleged herein, from occurring and/or reoccurring in the future.

112. As a direct and proximate result of Defendant's unlawful conduct alleged herein, Plaintiff and Class Members have lost thousands if not millions of dollars of equity in their homes. Plaintiff and the Class members are direct victims of the Defendant's unlawful conduct, as herein alleged, and each has suffered injury in fact, and have lost money or property as a result of Defendant's unfair competition.

113. WHEREFORE, Plaintiff and members of the Class are entitled to equitable relief, including restitution, restitutionary disgorgement of all profits accruing to Defendant because of its unlawful and deceptive acts and practices, attorneys fees and costs, declaratory relief, and a permanent injunction enjoining Defendant from their unlawful activity.

///

///

VII.

THIRD CAUSE OF ACTION

FRAUDULENT OMISSIONS

(Against All Defendants)

114. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

115. As alleged herein, pursuant to TILA, 15 U.S.C. §1601, *et seq*., Regulation Z (12 C.F.R. §226) and the Federal Reserve Board's Official Staff Commentary, Defendant had a duty to disclose to Plaintiff, and each Class member, (i) the actual interest rate being charged on the Note(s), (ii) that negative amortization would occur and that the "principle balance *will* increase"; and (iii) that the initial interest rate on the note was discounted.

116. Defendant further had a duty to disclose to Plaintiff, and each Class member (i) the actual interest rate being charged on the Note(s), (ii) that negative amortization would occur and that the "principle balance *will* increase"; and (iii) that the initial interest rate on the note was discounted, based upon Defendant partial representations of material facts when Defendant had exclusive knowledge of material facts that negative amortization was certain to occur.

117. The Note(s) state at ¶ 3 (A) "Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principle." However, the true facts are that the payment rate provided by Defendant was insufficient to pay both interest and principle. In fact, the payment rate was not even sufficient to pay enough interest to avoid negative amortization which, under the terms of the Note(s) was certain to occur.

118. The Note(s) further state, at ¶ 3(C) "If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur." However, the payment schedule provided by Defendant in the TILD were absolutely incapable of covering the amount of interest due and therefore statement was false in that it omitted this material fact.

119. The Note(s) state an interest rate and an initial payment amount based on that interest rate. The TILDS Defendant gave to Plaintiff and the Class members include the schedule of payments (including that initial payment rate) but yet disclose a different interest rate. The payment schedule, however, is wholly unrelated to the true interest rate being charged on the loan and, at all times relevant

during the liability period, Defendant failed to disclose, and by omission, failed to inform Plaintiff and the Class members of this important material information.

120. The aforementioned omitted information was not known to Plaintiff and the Class members and which, at all times relevant, Defendant failed to disclose and/or actively concealed by making such statements and partial, misleading representations to Plaintiff and all others similarly situated. Because the Option ARM loans did not provide a low interest rate for the first three (3) to five (5) years of the Note, and the payment rate disclosed by Defendant was insufficient to pay both principle and interest, negative amortization occurred.

123. Defendant, and each of them, failed to disclose, and by omission failed to inform Plaintiff and each Class member that (i) the payment rate provided to Plaintiff and the Class members on the TILD was insufficient to pay both principle and interest; (ii) that negative amortization was absolutely certain to occur if Plaintiff and the Class members made payments according to the payment schedule provided by Defendant; and (iii) that loss of equity and/or loss of Plaintiff's and the Class members residence was substantially certain to occur if Plaintiff and the Class members made payments according to the payment schedule provided by Defendant.

124. As alleged herein, Defendant had a duty to disclose to Plaintiff, and each Class member and at all times relevant, failed to disclose and/or concealed material facts by making partial representations of some material facts when Defendant had exclusive knowledge of material facts, including but not limited to, (i) the disclosed interest was not the actual interest rate charged on the Note(s), (ii) that negative amortization was certain to occur, and (iii) that the initial rate was discounted. The concealed and omitted information was not known to Plaintiff and the Class members and which, at all times relevant, Defendant failed to disclose and/or actively concealed by making such statements and partial, misleading representations to Plaintiff and all others similarly situated. Because the Option ARM loans did not provide a low interest rate for the first three (3) to five (5) years of the Note, and the payment rate disclosed by Defendant was insufficient to pay both principle and interest, negative amortization occurred.

125. From the inception of Option ARM loan scheme, until the present, Defendant has engaged in a purposeful and fraudulent scheme to omit material facts known solely to them, and not

reasonably discoverable by Plaintiff and the Class members, regarding the true facts concerning the actual interest rate charged on the loans, the negative amortization that was certain to occur, and that the initial interest rate, in fact, was discounted, all of which Defendant were duty bound to clearly and conspicuously disclose to Plaintiff and the Class members in the TILDS.

126. Defendant has known from the inception of their Option ARM loan scheme that these loans, (i) do not provide the promised initial interest rate for the first three (3) to five (5) years of the Note, (ii) that negative amortization would occur and that Plaintiff's and the Class members' principle balances would increase, and (iii) that the initial interest rate was discounted and did not accurately reflect the interest that consumers were being charged on the loans.

127. Defendant purposefully and intentionally devised this Option ARM loan scheme to defraud and/or mislead consumers into believing that these loans would provide a low-interest rate loan, for the first three to five years of the note and that if they made their payments according to the payment schedule provided by Defendant that it would be sufficient to pay both principle and interest.

128. The omitted information, as alleged herein, was material to Plaintiff and each Class member in that had the information be disclosed, Plaintiff and each Class member would not have entered into the loans.

129. As a direct and proximate result of Defendant failures to disclose and omission of material facts, as alleged herein, Plaintiff and each Class member has suffered damages, which include, but are not limited to the loss of equity Plaintiff and each Class member had in their homes prior to entering these loans.

130. The wrongful conduct of Defendant, as alleged herein, was willful, oppressive, immoral, unethical, unscrupulous, substantially injurious, malicious and in conscious disregard for the well being of Plaintiff, and others similarly situated. Accordingly, Plaintiff, and the others similarly situated seek punitive damages against Defendant in an amount to deter Defendant from similar conduct in the future.

131. WHEREFORE, Plaintiff and members of the Class are entitled to all legal and equitable remedies provided by law, including but not limited to actual damages, exemplary damages, prejudgment interest and costs.

/ / /

VIII.

FOURTH CAUSE OF ACTION

(Violation of California's Unfair Competition Law, Bus. & Prof. Code §17200 *et seq.*, "Unfair" and "Fraudulent" Business Acts or Practices,

(Against All Defendants)

132. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

133. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class, and in her capacity as a private attorney general against all Defendants for their unfair, fraudulent and/or deceptive business acts and/or practices pursuant to California Business and Professions Code Sections 17200 et seq., which prohibits all unfair and/or fraudulent business acts and/or practices.

134. Plaintiff asserts these claims as she is a representative of an aggrieved group and as private attorney general on behalf of the general public and other persons who have expended funds that the Defendant should be required to pay or reimburse under the equitable and restitutionary remedies provided by California Business and Professions Code Sections 17200 et seq.

135. The instant claim is predicated on the generally applicable duty of any contracting party to not misrepresent material facts, and on the duty to refrain from unfair and deceptive business practices. The Plaintiff and the Class members hereby seek to enforce a general proscription of unfair business practices and the requirement to refrain from deceptive conduct. The instant claim is predicated on duties that govern anyone engaged in any business and anyone contracting with anyone else.

136. At all times relevant during the liability period, Defendant engaged in a pattern of deceptive conduct and concealment aimed at maximizing the number of borrowers who would accept their Option ARM loan. Defendants, and each of them, marketed and sold to Plaintiff and the Class members a deceptively devised financial product. Defendant marketed and sold their Option ARM loan product to consumers, including Plaintiff, in a false or deceptive manner. Defendant sold a loan which appeared to have a very low, fixed payment and interest rate for a period of three (3) to five (5) years and no negative amortization. However, at all times relevant during the liability period, Defendant failed to disclose, and by omission, failed to inform Plaintiff and the Class members the true fact that Defendant's

Option ARM loan was designed to, and did, cause negative amortization to occur.

137. Defendant lured Plaintiff and the Class members into the Option ARM loan with promises of low payment and low interest. Once Plaintiff and the Class members entered into these loans, Defendant switched the interest rate charged on the loans to a much higher rate than the one they advertised and promised to Plaintiff and the Class members. After entering these loans, Class members could not escape because Defendant purposefully placed into these loans an extremely onerous prepayment penalty that made it prohibitively expensive for consumers to extricate themselves from these loans. Thus, once on the hook, consumers could not escape from Defendant loans.

138. Plaintiff and the Class members were consumers who applied for a mortgage loan through Defendant. During the loan application process, in each case, Defendant uniformly promoted, advertised, and informed Plaintiff and Class members that in accepting these loan terms, Plaintiff and Class members would be able to lower their mortgage payment and save money.

139. Defendant promoted their Option ARM loan product as having a low payment and interest rate, i.e., typically between 1% and 3%. However, Defendant did not disclose that this was just a "teaser" rate, the purpose of which was to get consumers to enter into loan agreements with Defendant. Defendant did not disclose to Plaintiff and the Class members that the "teaser" rate was not the fixed rate that Defendant would actually charge Plaintiff and the Class members on their outstanding loan balances after the first thirty days. Nor did Defendant disclose that the corresponding payment schedule was not the true payment required, but was rather only a partial payment of the interest accruing on the loans.

140. Based on the Defendant's representations and misconduct as alleged herein, Plaintiff and the Class members agreed to finance their primary residence through Defendant's Option ARM loan product. Plaintiff and the Class members were told they were being sold a home loan with a low payment and interest rate. Plaintiff and the Class members were also led to believe that if they made payments based on this interest rate, and the payment schedule provided to them by Defendant, the loan would be a no negative amortization home loan. After, the fixed interest period, the loan documetns stated that the interest rate "may" change. Plaintiff and the Class members believed these facts to be true because that is what the Defendant wanted consumers to believe..

///

141. Defendant aggressively sold their product as a fixed low interest home loan. Defendant knew that if marketed and sold in such a manner, their Option ARM loan product would be a hugely popular and profitable product for them. Defendant also knew, however, that they were marketing their product in a false and deceptive manner. While Defendant trumpeted their low payment loans with a "teaser" rate to the public, Defendant knew, however, that this was not entirely true.

142. In fact, Defendant's Option ARM loan possessed a low, fixed *payment* but not a low interest rate. Unbeknownst to Plaintiff and Class members, the actual interest rate they were charged on their loans was not fixed. After purchasing Defendant's Option ARM loan product, Plaintiff and class members never actually received the benefit of the low advertised interest rate, or, in some cases, consumers received the low rate for just a single month. Immediately, thereafter, Defendant in every instance and for every loan increased the interest rate they charged Plaintiff and the Class members. Once Plaintiff and the Class members accepted Defendant's Option ARM loan, they had no viable option to extricate themselves because the loans contracts included a draconian pre-payment penalty.

143. Defendant perpetrated this bait and switch scheme on Plaintiff and Class members in a common and uniform manner. Defendant's misconduct and failures to disclose the truth about the actual interest rate charged on the loans and describing the loans as having a low payment that corresponded to a listed "teaser" rate was, at all times relevant, deceptive and unfair. Defendant initiated this scheme in order to maximize the amount of the loans issued to consumers and to maximize Defendant's profits.

144. The acts, misrepresentations, omissions, and practices of Defendant alleged above constitute unfair, and/or fraudulent business acts and/or practices within the meaning of California Business and Professions Code Sections 17200 et seq.

145. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of Business and Professions Code Sections 17200, et seq.

146. Defendant's conduct, as alleged herein, was likely to deceive members of the consuming public, and at all times relevant during the liability period, Defendant's failures to disclose and omission of material facts have been and continue to be unfair, fraudulent, untrue and/or deceptive.

///

147. Defendant's misconduct as alleged herein gave Defendant an unfair competitive advantage over their competitors.

148. As a direct and proximate result of the aforementioned acts, Defendant, and each of them, received monies and continues to hold the monies expended by Plaintiff and others similarly situated who purchased the Option ARM loans as described herein.

149. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a constructive trust over, and restitution of, the monies collected and realized by Defendant.

150. The harm to Plaintiff, members of the general public and others similarly situated outweighs the utility of Defendant's policies, acts and/or practices and, consequently Defendant's conduct herein constitutes an unlawful business act or practice within the meaning of California Business & Professions Code Sections 17200 et seq.

151. The unfair, deceptive and/or fraudulent business practices of Defendant, as alleged herein, presents a continuing threat to members of the public to be mislead and/or deceived by Defendant's Option ARM loans as described herein. Plaintiff and other members of the general public have no other remedy of law that will prevent Defendant misconduct as alleged herein from occurring and/or reoccurring in the future.

152. As a direct and proximate result of Defendant's unfair and/or fraudulent conduct alleged herein, Plaintiff and Class Members have lost thousands if not millions of dollars of equity in their homes. Plaintiff and Class members are direct victims of the Defendant's unlawful conduct, and each has suffered injury in fact, and have lost money or property as a result of Defendant's unfair competition.

153. WHEREFORE, Plaintiff and members of the Classes are entitled to equitable relief, including restitution, restitutionary disgorgement of all profits accruing to Defendant because of their unfair, fraudulent, and deceptive acts and/or practices, attorneys fees and costs, declaratory relief, and a permanent injunction enjoining Defendant from their unfair, fraudulent and deceitful activity.

///

///

///

IX.

FIFTH CAUSE OF ACTION

Breach of Contract

(Against All Defendants)

154. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

155. Plaintiff and Class members entered into a written home loan agreement – the contract or Note – with Defendant. The Note was drafted by Defendant and could not be modified by Plaintiff or the Class members. The Note describes terms and respective obligations applicable to the parties herein.

156. The Note states the interest rate on the loan at 1% to 3% and indicates that it "may" change. The payment schedule in the TILDS, for the first three (3) to five (5) years of the Note, are based on that low 1% to 3% "teaser" interest rate.

157. Defendant drafted the Note and did not allow Plaintiff or the Class members any opportunity to make changes to the Note and due to Defendant's superior bargaining position, the Note was offered on a take it or leave it basis. As such, the Notes at issue are contracts of adhesion.

158. Defendant expressly and/or through their conduct and actions agreed that Plaintiff's and the Class members' monthly payment obligations would be sufficient to pay both the principal and interest owed on the loans.

159. At all times relevant during the liability period, Defendant breached this agreement and never applied any of Plaintiff's and the Class members' payments to principal.

160. The written payment schedules prepared by Defendant, and applicable to Plaintiff's and Class members' loans, show that the payment amounts owed by Plaintiff and Class members to Defendant in year one are exactly equal to the amount required to pay off the loan if, indeed, the interest actually charged on the loan was the low interest rate promised. If the Defendant did as promised, the payments would have been sufficient to pay both principal and interest amounts.

161. Instead, Defendant immediately raised Plaintiff's and Class members' interest rates and applied ***no part*** of Plaintiff's and Class members' payments were applied to the principal balances on their loans. In fact, because Defendant charged more interest than was agreed to and payments, as disclosed by Defendant, were, at all times relevant, insufficient to cover the interest charge and thus

principal balances increased (which is the negative amortization built into the loan).

162. Defendant breached the written contractual agreement by failing to apply any portion of Plaintiff's and the Class members' monthly payments towards their principal loan balances.

163. Plaintiff and the Class members, on the other hand, did all of those things the contract required of them. Plaintiff and the Class members made monthly payments in the amount required by the terms of the Note and reflected in the payment schedule prepared by Defendant.

164. As a result of Defendant's breach of the agreement, Plaintiff and the Class members have suffered harm. Plaintiff and Class members have incurred additional charges to their principal loan balance. Plaintiff and Class members have incurred and will continue to incur additional interest charges on the principal loan balance and surplus interest added to Plaintiff's and Class members' principal loan balance. Furthermore, Defendant's breach has placed Plaintiff and Class members in danger of losing their homes through foreclosure, as Defendant has caused Plaintiff's and Class members' principal loan balances to increase and limited these consumers' ability to make their future house payments or obtain alternative home loan financing.

165. At all times relevant, there existed a gross inequality of bargaining power between the parties to the ARM loan contracts. At all times relevant, Defendant unreasonably and unconscionably exploited their superior bargaining position and foisted upon Plaintiff and the Class members extremely harsh, one-sided provisions in the loan contract, which Plaintiff and Class members were not made aware of and did not comprehend (*e.g.*, Defendant fraud and failures to clearly and conspicuously disclose as alleged herein), and which attempt to severely limit Defendant's obligations under these loan contracts at the expense of Plaintiff and Class members, as alleged herein. As a direct and proximate result of these extremely harsh, one-sided provisions, including but not limited to the provisions which seek to limit the "teaser" interest rate for one month or less, these provisions are unconscionable and therefore unenforceable.

166. WHEREFORE, Plaintiff and members of the Classes are entitled to declaratory relief, compensatory damages proximately caused by Defendant breach of contract as alleged herein, pre-judgment interest, costs of suit and other relief as the Court deems just and proper.

X.

SIXTH CAUSE OF ACTION

Breach of Implied Covenant of Good Faith and Fair Dealing

(Against All Defendants)

167. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

168. Defendant entered into written contracts with Plaintiff and Class members based on representations Defendant made directly and indirectly to Plaintiff and the Class members about the terms of their loans.

169. Defendant expressly and impliedly represented to Plaintiff and the Class members that they would provide loans secured by Plaintiff's and Class members' homes, and that the loans would have a fixed interest rate at promised low interest rate for a period of three (3) to five (5) years.

170. Defendant also represented that if Plaintiff and the Class members made the monthly payments in the amount prescribed by Defendant that no negative amortization would occur. The Note expressly states and/or implies that Plaintiff's and Class members' monthly payment obligation **will** be applied to pay both principal and interest owed on the loan. The Note further states that for each monthly payment Plaintiff and the Class members interest shall be paid before principal.

171. The written payment schedules prepared by Defendant, and applicable to Plaintiff's and Class members' loans, show that the payment amounts owed by Plaintiff and Class members to Defendant in year one are exactly equal to the amount required to pay off the loan if, indeed, the interest actually charged on the loan was the low interest rate promised. If the Defendant acted as it promised, the payments would have been sufficient to pay both principal and interest.

172. Instead, Defendant immediately raised Plaintiff's and Class members' interest rate and applied ***no part*** of Plaintiff's and Class members' payment to principal. In fact, because Defendant charged more interest than was disclosed and agreed to in the loan contracts, Plaintiff and the Class members' payments were insufficient to cover the interest that Defendant charged resulting in an increase in the amount of principal Plaintiff and the Class members owed on their homes.

173. Defendant unfairly interfered with Plaintiff's and Class members' rights to receive the benefits of the contract. These loans will cost Plaintiff and Class members thousands of dollars more

than represented by Defendant. Plaintiff and Class members did not receive the fixed low interest rate home loan promised them by Defendant. Defendant has caused Plaintiff and Class members to lose equity in their homes and therefore have denied Plaintiff and Class members the enjoyment, security of one of their most important investments.

174. Plaintiff and the Class members, on the other hand, did all of those things the contract required of them. Plaintiff and the Class members made monthly payments in the amount required by the terms of the Note and reflected in the payment schedule prepared by Defendant.

175. At all times relevant, Defendant unreasonably denied Plaintiff and members of the Class the benefits promised to them under the terms of the Note, including but not limited to: (i) the promised low interest rate for the first three (3) to five (5) years of the loan as reflected in the payment schedule, (ii) payments to both principle and interest during the first three (3) to five (5) years of the loan; and (iii) secretly added negative amortization to the principle balance, and charged interest on that unpaid interest.

176. Knowing the truth and motivated by profit and market share, Defendant has knowingly and willfully breached the implied covenant of good faith and fair dealing by engaging in the acts and/or omissions to mislead and/or deceive Plaintiff and others similarly situated as alleged herein.

177. Defendant's breaches, as alleged herein, were committed with willful and wanton disregard for whether or not Plaintiff or others similarly situated would actually receive a home loan that would provide the promised low interest and payment rate for the first three (3) to five (5) years of the loan sufficient to pay both principle and interest.

178. Upon information and belief, and at all times relevant during the liability period, Defendant possessed full knowledge and information concerning the above facts about the Option ARM loans, and otherwise marketed and sold these loans throughout the United States, including the State of California.

179. Defendant's placing of their corporate and/or individual profits over the rights of others is particularly vile, base, contemptible, and wretched and said acts and/or omissions were performed on the part of officers, directors, and/or managing agents of each corporate Defendant and/or taken with the advance knowledge of the officers, directors, and/or managing agents who authorized and/or ratified said

acts and/or omissions. Defendant thereby acted with malice and complete indifference to and/or conscious disregard for the rights and safety of others, including Plaintiff and the General Public.

180. At all times relevant during the liability period, Defendant's conduct, as alleged herein, was malicious, oppressive, and/or fraudulent.

181. As a direct and proximate result of Defendant's misconduct, as alleged herein, Plaintiff and the Class members have suffered harm. Plaintiff and the Class members have incurred additional charges to their principal loan balances. Plaintiff and the Class members have incurred and will continue to incur additional interest charges on their principal loan balances which Defendant has secretly added to their principal loan balances. Furthermore, Defendant's breach has caused and/or otherwise placed Plaintiff and the Class members in danger of losing their homes through foreclosure and, as a direct and proximate result of said misconduct, caused Plaintiff's and the Class members' principal loan balances to increase limiting these consumers' ability to make their future house payments or obtain alternative home loan financing.

182. WHEREFORE, Plaintiff and members of the Classes are entitled to declaratory relief, all damages proximately caused by Defendant breach of the implied covenant of good faith and fair dealing as alleged herein, punitive damages, pre-judgment interest, costs of suit and other relief as the Court deems just and proper.

XI.

SEVENTH CAUSE OF ACTION

Violation of California's Unfair Competition Law, Bus. & Prof. Code §17200, *et seq.*, –

"Unlawful" Business Acts or Practices Predicated on

Violations of Cal. Financial Code § 22302

(Against All Defendants)

183. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

184. Plaintiff brings this cause of action on behalf of herself, on behalf of the Class, and in her capacity as a private attorney general against all Defendant for their unlawful business acts and/or practices pursuant to California Business and Professions Code Sections 17200 *et seq.*, which prohibits

all unlawful business acts and/or practices.

185. Plaintiff asserts these claims as she is a representative of an aggrieved group and as a private attorney general on behalf of the general public and other persons who have expended funds that the Defendant should be required to pay or reimburse under the equitable and restitutionary remedies provided by California Business and Professions Code Sections 17200 *et seq*.

186. The unlawful acts and practices of Defendant alleged above constitute unlawful business acts and/or practices within the meaning of California Business and Professions Code Sections 17200 et seq.

187. By engaging in the above-described acts and practices, Defendant has committed one or more acts of unfair competition within the meaning of Business and Professions Code Sections 17200, et seq.

188. Defendant's unlawful business acts and/or practice as alleged herein have violated numerous laws and/or regulations and said predicate acts are therefore *per se* violations of §17200, *et seq*. These predicate unlawful business acts and/or practices include Defendant violation of California Financial Code § 22302.

189. California Financial Code § 22302 applies to consumer loan contracts. It states that a loan found to be unconscionable pursuant to Section 1670.5 of the California Civil Code shall be deemed to be a violation of Financial Code § 22302.

190. The loan contracts prepared by Defendant and entered into between Plaintiff and the Class members and Defendant were, and are, unconscionable pursuant to Section 1670.5 of the Civil Code.

191. The relative bargaining position between Plaintiff and the Class members and Defendant was unequal. Plaintiff and the Class members could not negotiate or change any of the particular terms related to the loan contracts drafted by Defendant. To secure the loans Plaintiff and the Class members were given no choice but to make the payments as stated in the payment schedule and to accept and sign all the associating documents numbering over a hundred pages.

192. The period of time in which Defendant actually provided the promised low interest rate was for only one month. Because Defendant packaged the documents in such a manner as to lead

Plaintiff and the Class members to believe that they had a low interest rate loan for the first three (3) to five (5) years of the Note, and therefore low payments for three to five years, this resulted in Plaintiff and the Class members owing significantly more on their homes than before they entered into these loan contracts.

193. Defendant drafted these loan documents for use on tens of thousands of individuals in a common and uniform manner. The loan process was such that individual terms could not be modified. The documents evidencing the loan were delivered to Plaintiff and the Class members at the time of signature. The loan process offered by Defendant did not permit for any meaningful negotiation of terms or even allow sufficient time to conduct an adequate review of the loan documents at the time of execution. And, even when sufficient time was allowed, the documents contained inconsistent and conflicting information, as alleged herein, which therefore made it difficult, if not impossible, for consumers to decipher what legal obligations the loans would entail.

194. In furtherance of their scheme, Defendant inserted into the loan contracts a prepayment penalty provision that has, as it sole purpose, to cause Plaintiff and the Class members to continue under the terms of this loans or lose thousands of dollars if Plaintiff try to refinance the loans.

195. The loans, as drafted and presented by Defendant, were so "one-sided" that they could only lead Plaintiff and the Class members to one result, which was a significant loss of money. As a direct and proximate result of Defendant's unconscionable conduct, as alleged herein, Plaintiff and the Class members have suffered direct and actual injury.

196. Because Defendant's Option ARM loan contract is unconscionable pursuant to Section 1670.5 of the Civil Code, Defendant's Option ARM loan violates Financial Code § 22302 and constitutes a violation of the UCL.

197. As a direct and proximate result of the aforementioned acts, Defendant, and each of them, received monies and continues to hold the monies expended by Plaintiff and others similarly situated who purchased the ARM loans as described herein.

198. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a constructive trust over, and restitution of, the monies collected and realized by Defendant.

199. The unlawful acts and practices, as fully described herein, present a continuing threat to

members of the public to be mislead and/or deceived by Defendant as described herein. Plaintiff and other members of the general public have no other remedy of law that will prevent Defendant's misconduct, as alleged herein, from occurring and/or reoccurring in the future.

200. As a direct and proximate result of Defendant's unlawful conduct alleged herein, Plaintiff and the Class Members have lost thousands if not millions of dollars of equity in their homes. Plaintiff and the Class members are direct victims of the Defendant's unlawful conduct, as herein alleged, and each has suffered injury in fact, and have lost money or property as a result of Defendant's unfair competition.

201. WHEREFORE, Plaintiff and members of the Class are entitled to equitable relief, including restitution, restitutionary disgorgement of all profits accruing to Defendant because of their unlawful, unfair and fraudulent, and deceptive practices, attorneys fees and costs, declaratory relief, and a permanent injunction enjoining Defendant from their unlawful activity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and all Class members pray for judgment against each Defendant, jointly and severally, as follows:

A. An order certifying this case as a class action and appointing Plaintiff and their counsel to represent the Class;

B. For actual damages according to proof;

C. For compensatory damages as permitted by law;

D. For consequential damages as permitted by law;

E. For punitive damages as permitted by law;

F. For rescission;

G. For equitable relief, including restitution;

H. For restitutionary disgorgement of all profits Defendant obtained as a result of their unfair competition;

I. For interest as permitted by law;

J. For Declaratory Relief;

K. For a mandatory injunction requiring Defendant to permanently include in every Option ARM loan and disclosure statement: (i) clear and conspicuous disclosure of the actual interest rate on the Note(s) and disclosure statement(s) as required under 12 C.F.R. § 226.17 by; (ii) clear and conspicuous disclosure in the Note(s) and the disclosure statement(s) that payments on the variable interest rate loan during the initial period at the teaser rate will result in negative amortization and that the principal balance will increase as required under 12 C.F.R. § 226.19; and (iii) clear and conspicuous disclosure that the initial interest rate provided is discounted and does not reflect the actual interest that Plaintiff and Class members would be paying on the Note(s).

L. For reasonable attorneys' fees and costs; and

M. For such other relief as is just and proper.

DATED: January 4, 2008

MARCUS J. JACKSON, Attorney at Law

By: ______________________

Marcus J. Jackson
751 Center Dr., Suite 108-456
San Marcos, CA 92069

David M. Arbogast, Esq.
SPIRO MOSS BARNESS LLP
11377 W. Olympic Boulevard, Fifth Floor
San Diego, CA 90064-1683
Phone: (310) 235-2468
Fax: (310) 235-2456

Jeffrey K. Berns, Esq.
LAW OFFICES OF JEFFREY K. BERNS
19510 Ventura Blvd, Suite 200
Tarzana, California 91356
Phone: (818) 961-2000
Fax: (818) 867-4820

Paul R. Kiesel, Esq.
Patrick Deblase, Esq.
Michael C. Eyerly, Esq.
KIESEL BOUCHER LARSON LLP
8648 Wilshire Boulevard
Beverly Hills, California 90210
Phone: (310) 854-4444
Fax: (310) 854-0812

///

Jonathan Shub, Esq.
SEEGER WEISS LLP
1515 Market Street, Suite 1380
Philadelphia, PA 19107
Phone: (215) 564-2300
Fax (215) 851-8029

Attorneys for Plaintiff, FRANCENA D. PENCE, and all others Similarly Situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury to the full extent permitted by law.

DATED: January 11, 2008

MARCUS J. JACKSON, Attorney at Law

By: ______________________
Marcus J. Jackson
751 Center Dr., Suite 108-456
San Marcos, CA 92069

David M. Arbogast, Esq.
SPIRO MOSS BARNESS LLP
11377 W. Olympic Boulevard, Fifth Floor
San Diego, CA 90064-1683
Phone: (310) 235-2468
Fax: (310) 235-2456

Jeffrey K. Berns, Esq.
LAW OFFICES OF JEFFREY K. BERNS
19510 Ventura Blvd, Suite 200
Tarzana, California 91356
Phone: (818) 961-2000
Fax: (818) 867-4820

Paul R. Kiesel, Esq.
Patrick Deblase, Esq.
Michael C. Eyerly, Esq.
KIESEL BOUCHER LARSON LLP
8648 Wilshire Boulevard
Beverly Hills, California 90210
Phone: (310) 854-4444
Fax: (310) 854-0812

Jonathan Shub, Esq.
SEEGER WEISS LLP
1515 Market Street, Suite 1380
Philadelphia, PA 19107
Phone: (215) 564-2300
Fax (215) 851-8029

Attorneys for Plaintiff, FRANCENA D. PENCE, and all others Similarly Situated

ADJUSTABLE RATE NOTE
(MTA-Twelve Month Average Index - Payment Caps)

CHRISTIAN
Loan #: 10538962
MIN: 100046900000448923

THIS NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THIS NOTE.

SEPTEMBER 11, 2006	IRVINE	CALIFORNIA
[Date]	[City]	[State]

2532 LUCIERNAGA STREET, CARLSBAD, CA 92009
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $650,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. The Principal amount may increase as provided under the terms of this Note but will never exceed (115.000%) of the Principal amount I originally borrowed. This is called the "Maximum Limit." Lender is AMERICAN STERLING BANK, A MISSOURI CORPORATION. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.000%. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of this Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the 1ST day of NOVEMBER, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

10538962

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE AND TWO TENTHS percentage point(s) 3.200% ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950%. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the 1ST day of each month beginning on NOVEMBER 1, 2006. I will make these payments every month until I have paid all the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on OCTOBER 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 11206 E. 24 HIGHWAY, SUGAR CREEK, MO 64054-8500 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. $2,090.66 unless adjusted under Section 3(F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the 1ST day of NOVEMBER, 2007, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount the Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and Interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For

10538962

each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the 10TH Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be given the following Payment Options:

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.
(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.
(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

4. NOTICE OF CHANGES

The Note Holder will deliver or mail to me a notice of any changes in the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments. My partial Prepayment may reduce the amount of my monthly payments after the first Payment Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

10538952

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of fifteen (15) calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of Principal and Interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. The date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all the amounts owed under this Note.

10538962

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of these conditions are described as follows:

> **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.
>
> If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.
>
> To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.
>
> If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

10538962

NOTICE TO CONSUMER

1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT.
2. YOU ARE ENTITLED TO A COPY OF THIS AGREEMENT.
3. YOU MAY PREPAY THE UNPAID BALANCE AT ANY TIME WITHOUT PENALTY.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

____
- BORROWER - DOREEN E. CHRISTIAN - DATE -

[Sign Original Only]

TRUTH-IN ENDING DISCLOSURE STA MENT

(THIS IS NEITHER A CONTRACT NOR A COMMITMENT TO LEND)

Applicants: **Doreen Christian**

Property Address: **2532 Luciernaga St, Carlsbad, CA 92009**

Application No: **Christian**

Prepared By: **First Choice Funding Group, 765 The City Drive Ste-400, Orange, CA 92868, 909-230-4560**

Date Prepared: **08/19/2006**

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid after making all payments as scheduled
1.062 %	$ 108,507.07	$ 644,129.20	$ 752,636.27

☐ REQUIRED DEPOSIT: The annual percentage rate does not take into account your required deposit

PAYMENTS: Your payment schedule will be:

Number of Payments	Amount of Payments **	When Payments Are Due	Number of Payments	Amount of Payments **	When Payments Are Due	Number of Payments	Amount of Payments **	When Payments Are Due
		Monthly Beginning:			Monthly Beginning:			Monthly Beginning:
359	2,090.66	11/01/2006						
1	2,089.33	10/01/2036						

☐ DEMAND FEATURE: This obligation has a demand feature.

☐ VARIABLE RATE FEATURE: This loan contains a variable rate feature. A variable rate disclosure has been provided earlier.

CREDIT LIFE/CREDIT DISABILITY: Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature	
Credit Life		I want credit life insurance.	Signature:
Credit Disability		I want credit disability insurance.	Signature:
Credit Life and Disability		I want credit life and disability insurance.	Signature:

INSURANCE: The following insurance is required to obtain credit:

☐ Credit life insurance ☐ Credit disability ☐ Property insurance ☐ Flood insurance

You may obtain the insurance from anyone you want that is acceptable to creditor

☐ If you purchase ☐ property ☐ flood insurance from creditor you will pay $ for a one year term.

SECURITY: You are giving a security interest in:

☐ The goods or property being purchased ☐ Real property you already own.

FILING FEES: $

LATE CHARGE: If a payment is more than 15 days late, you will be charged 5.000 % of the payment

PREPAYMENT: If you pay off early, you

☐ may ☐ will not have to pay a penalty.

☐ may ☐ will not be entitled to a refund of part of the finance charge.

ASSUMPTION: Someone buying your property

☐ may ☐ may, subject to conditions ☐ may not assume the remainder of your loan on the original terms.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment refunds and penalties

☐ * means an estimate ☐ all dates and numerical disclosures except the late payment disclosures are estimates.

* * NOTE: The Payments shown above include reserve deposits for Mortgage Insurance (if applicable), but exclude Property Taxes and Insurance.

THE UNDERSIGNED ACKNOWLEDGES RECEIVING A COMPLETED COPY OF THIS DISCLOSURE.

Doreen Christian (Applicant) (Date)   (Applicant) (Date)

(Applicant) (Date)   (Applicant) (Date)

(Lender) (Date)

DATE: SEPTEMBER 11, 2006
BORROWER: DOREEN E. CHRISTIAN
PROPERTY ADDRESS: 2532 LUCIERNAGA STREET, CARLSBAD, CA 92009

PREPAYMENT PENALTY ADDENDUM

CHRISTIAN
Loan #: 10538962
MIN: 100046900000448923

THIS PREPAYMENT PENALTY ADDENDUM is dated SEPTEMBER 11, 2006, and is incorporated into and amends and supplements the Note of the same date (the "Note") given by AMERICAN STERLING BANK, A MISSOURI CORPORATION (the "Lender"). The Note is secured by a Mortgage or Deed of Trust or comparable security instrument (the "Security Instrument") covering the property (the "Property") identified in the Security Instrument.

The section of the Note entitled "Borrower's Right to Prepay" is replaced with the following new section:

BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A prepayment of all of the unpaid Principal is known as a "Full Prepayment." A prepayment of only part of the unpaid Principal is known as a "Partial Prepayment." When I make a Partial or Full Prepayment, I will tell the Note Holder in writing that I am doing so.

Subject to the Prepayment Penalty specified below, I may make a Full Prepayment or Partial Prepayments of my obligation. The Note Holder will use all of my prepayments to reduce the amount of Principal that I owe under the Note. If I make a Partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment.

If within the first THIRTY-SIX months after the execution of this Note, I make prepayment(s), the total of which exceeds twenty (20) percent of the original Principal amount of this Note, I agree to pay a Prepayment Penalty in an amount equal to the payment of six (6) months' advance interest on the amount by which the total of my prepayment(s) during the twelve (12) month period immediately preceding the date of the prepayment exceeds twenty (20) percent of the original Principal amount of this Note. Interest will be calculated using the rate in effect at the time of prepayment. I will pay this Prepayment Penalty regardless of whether I sell the Property or refinance the loan with the same Lender or Note Holder.

All other terms and conditions of the above referenced Note remain in full force and effect.

____
- BORROWER - DOREEN E. CHRISTIAN - DATE -

Doc ID#:

ADJUSTABLE RATE RIDER
(MTA-Twelve Month Average Index - Payment Caps)

CHRISTIAN
Loan #: 10538962
PIN: 215-250-23
MIN: 100046900000448923

THIS ADJUSTABLE RATE RIDER is made this 11TH day of SEPTEMBER, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to AMERICAN STERLING BANK, A MISSOURI CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

2532 LUCIERNAGA STREET, CARLSBAD, CA 92009
[Property Address]

THE NOTE CONTAINS PROVISIONS THAT WILL CHANGE THE INTEREST RATE AND THE MONTHLY PAYMENT. THERE MAY BE A LIMIT ON THE AMOUNT THAT THE MONTHLY PAYMENT CAN INCREASE OR DECREASE. THE PRINCIPAL AMOUNT TO REPAY COULD BE GREATER THAN THE AMOUNT ORIGINALLY BORROWED, BUT NOT MORE THAN THE MAXIMUM LIMIT STATED IN THE NOTE.

ADDITIONAL COVENANTS: In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agrees as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES
The Note provides for changes in the interest rate and the monthly payments, as follows:

2. INTEREST

10538962

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 1.000%. The interest rate I will pay may change.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 7(B) of the Note.

(B) Interest Rate Change Dates

The interest rate I will pay may change on the 1ST day of NOVEMBER, 2006, and on that day every month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date." The new rate of interest will become effective on each Interest Rate Change Date. The interest rate may change monthly, but the monthly payment is recalculated in accordance with Section 3.

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an Index. The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent Index figure available as of the date 15 days before each Interest Rate CHange Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE AND TWO TENTHS percentage point(s) 3.200% ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950%. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month.

I will make my monthly payments on the 1ST day of each month beginning on NOVEMBER 1, 2006. I will make these payments every month until I have paid all the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on OCTOBER 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 11206 E. 24 HIGHWAY, SUGAR CREEK, MO 64054-8500 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. $2,090.66 unless adjusted under Section 3(F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the 1ST day of NOVEMBER, 2007, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to

10538962

pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

I will pay the amount of my new Minimum Payment each month beginning on each Payment Change Date or as provided in Section 3(F) or 3(G) below.

(D) Calculation of Monthly Payment Changes

At least 30 days before each Payment Change Date, the Note Holder will calculate the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Payment Change Date in full on the maturity date in substantially equal payments at the interest rate effective during the month preceding the Payment Change Date. The result of this calculation is called the "Full Payment." Unless Section 3(F) or 3(G) apply, the amount of my new monthly payment effective on a Payment Change Date, will not increase by more than 7.5% of my prior monthly payment. This 7.5% limitation is called the "Payment Cap." This Payment Cap applies only to the Principal and Interest payment and does not apply to any escrow payments Lender may require under the Security Instrument. The Note Holder will apply the Payment Cap by taking the amount of my Minimum Payment due the month preceding the Payment Change Date and multiplying it by the number 1.075. The result of this calculation is called the "Limited Payment." Unless Section 3(F) or 3(G) below requires me to pay a different amount, my new Minimum Payment will be the lesser of the Limited Payment and the Full Payment. I also have the option to pay the Full Payment for my monthly payment.

(E) Additions to My Unpaid Principal

Since my monthly payment amount changes less frequently than the interest rate, and since the monthly payment is subject to the payment limitations described in Section 3(D), my Minimum Payment could be less than or greater than the amount of the interest portion of the monthly payment that would be sufficient to repay the unpaid Principal I owe at the monthly payment date in full on the Maturity Date in substantially equal payments. For each month that my monthly payment is less than the interest portion, the Note Holder will subtract the amount of my monthly payment from the amount of the interest portion and will add the difference to my unpaid Principal, and interest will accrue on the amount of this difference at the interest rate required by Section 2. For each month that the monthly payment is greater than the interest portion, the Note Holder will apply the payment as provided in Section 3(A).

(F) Limit on My Unpaid Principal; Increased Monthly Payment

My unpaid Principal can never exceed the Maximum Limit equal to ONE HUNDRED FIFTEEN percent (115.000%) of the Principal amount I originally borrowed. My unpaid Principal could exceed that Maximum Limit due to Minimum Payments and interest rate increases. In that event, on the date that my paying my monthly payment would cause me to exceed that limit, I will instead pay a new monthly payment. This means that my monthly payment may change more frequently than annually and such payment changes will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to repay my then unpaid Principal in full on the Maturity Date in substantially equal payments at the current interest rate.

(G) Required Full Payment

On the TENTH Payment Change Date and on each succeeding fifth Payment Change Date thereafter, I will begin paying the Full Payment as my Minimum Payment until my monthly payment changes again. I also will begin paying the Full Payment as my Minimum Payment on the final Payment Change Date.

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options." I may be

10538962

given the following Payment Options:

(i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.
(ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments.
(iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term.

These Payment Options are only applicable if they are greater than the Minimum Payment.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

10538962

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

- BORROWER - DOREEN E. CHRISTIAN - DATE -

Recording Requested By /
Return To:
AMERICAN STERLING BANK
27422 PORTOLA PARKWAY, SUITE
110
FOOTHILL RANCH, CA 92610
(949) 616-1000
ATTN: SHIPPING DEPARTMENT

Prepared By:
ROD MIGUEL
AMERICAN STERLING BANK, A
MISSOURI CORPORATION
27422 PORTOLA PARKWAY, SUITE
#110
FOOTHILL RANCH, CA 92610
(816) 521-2500

[Space Above This Line For Recording Data]

DEED OF TRUST

CHRISTIAN
Loan #: 10538962
PIN: 215-250-23
MIN: 100046900000448923

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated SEPTEMBER 11, 2006, together with all Riders to this document.
(B) "Borrower" is DOREEN E. CHRISTIAN, AN UNMARRIED WOMAN. Borrower is the trustor under this Security Instrument.
(C) "Lender" is AMERICAN STERLING BANK, A MISSOURI CORPORATION. Lender is a CORPORATION organized and existing under the laws of MISSOURI. Lender's address is 11206 E. 24 HIGHWAY, SUGAR CREEK, MO 64054-8500.
(D) "Trustee" is FIRST TRUSTEE SERVICES, INC., A MISSOURI CORP..
(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated SEPTEMBER 11, 2006. The Note states that Borrower owes Lender SIX HUNDRED FIFTY THOUSAND AND 00/100 Dollars (U.S. $650,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than OCTOBER 1, 2036.
(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☒ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☐ Planned Unit Development Rider	☐ Biweekly Payment Rider
☐ 1-4 Family Rider	☐ Other(s) [specify]	

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

10538962

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(M) "Escrow Items" means those items that are described in Section 3.
(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.
(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter.
As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY of SAN DIEGO:
LOT 181 OF LA COSTA MEADOWS UNIT NO. 1, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 6800, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, DECEMBER 9, 1970.
which currently has the address of 2532 LUCIERNAGA STREET CARLSBAD, California 92009 ("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:
1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money

10538962

order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

10538962

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay

10538962

Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required

10538962

by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to

10538962

Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the

10538962

notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the other persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Lender may charge such person or persons a reasonable fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law. If the fee charged does not exceed the fee set by Applicable Law, the fee is conclusively presumed to be reasonable.

24. Substitute Trustee. Lender, at its option, may from time to time appoint a successor trustee to any Trustee appointed

10538962

hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county in which the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Security Instrument is recorded and the name and address of the successor trustee. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by Applicable Law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

25. Statement of Obligation Fee. Lender may collect a fee not to exceed the maximum amount permitted by Applicable Law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

____

- BORROWER - DOREEN E. CHRISTIAN - DATE -

State of)
)
County of)

On ______________ before me, ______________________________,
(here insert name and title of the officer)

personally appeared
____
____
______________________________,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature ______________________________ (Seal)

A DIVISION OF FIDELITY NATIONAL FINANCIAL
LSI Local Solutions
420 Exchange
Irvine, CA 92602
(P) (877)868-6883
(F) 949-271-0712

ADDITION AND/OR AMENDMENT TO ESCROW INSTRUCTIONS

Date: September 19, 2006
Escrow Number: 2625438-BD
Escrow Officer: Becky Davis

The instructions in this escrow are hereby modified, amended and/or supplemented in the following particulars:

NEW LOAN: Borrower obtaining and property qualifying for a new Conventional trust deed loan securing a note in the amount of $650,000.00 in favor of American Sterling Bank. Said loan shall bear interest an initial adjustable rate of 1.0000% per annum, for a term of 30.00 years, per terms and conditions of Lender's instructions to be deposited into escrow. Borrower's signature on all loan documents shall constitute their full approval of the terms and conditions contained therein.

All other terms and conditions remain the same.

____
Doreen E. Christian

MAILING ADDRESS (AFTER CLOSE OF ESCROW):

____

____

Home Telephone:
Work Telephone:

NOTICE OF RIGHT TO CANCEL

CHRISTIAN
Loan #: 10538962

Borrower: DOREEN E. CHRISTIAN

YOUR RIGHT TO CANCEL

You are entering into a transaction that will result in a security interest in your home. You have a legal right under federal law to cancel this transaction, without cost, within three (3) business days from whichever of the following events occurs last:

(1) the date of the transaction, which is September 20th, 2006 ; or
(2) the date you received your Truth-in-Lending disclosures; or
(3) the date you received this notice of your right to cancel.

DEC

If you cancel the transaction, the security interest is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the security interest in your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection within this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this transaction, you may do so by notifying us in writing at:

AMERICAN STERLING BANK
27422 PORTOLA PARKWAY, SUITE #110
FOOTHILL RANCH, CA 92610

You may use any written statement that is signed and dated by you and states your intention to cancel or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

DEC

If you cancel by mail or telegram, you must send the notice no later than midnight of September 23, 2006 ; (or midnight of the third business day* following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

____

RECEIPT OF NOTICE OF RIGHT TO CANCEL

Each of the undersigned have now received two **Notice of Right to Cancel** forms. The above real estate loan cannot be funded until three (3) business days* have elapsed since the date of this acknowledgement of receipt of the **Notice of Right to Cancel.**

*Business days include all days except Sundays, New Year's Day, Martin Luther King Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

Date **Notice of Right to Cancel** form received: ______________________.

Doreen E. Christian 9-20-06

- BORROWER - DOREEN E. CHRISTIAN - DATE -

DATE: SEPTEMBER 11, 2006
BORROWER: DOREEN E. CHRISTIAN
CASE #:
PROPERTY ADDRESS: 2532 LUCIERNAGA STREET, CARLSBAD, CA 92009

ADJUSTABLE RATE MORTGAGE LOAN PROGRAM DISCLOSURE
MONTHLY TREASURY AVERAGE INDEX - PAYMENT CAPS
ALL STATES EXCEPT NEW YORK

CHRISTIAN
Loan #: 10538962
MIN: 100046900000448923

This disclosure describes the features of an Adjustable Rate Mortgage (ARM) program you are considering. Information about our other ARM programs will be provided upon request.

HOW YOUR INTEREST RATE AND PAYMENT ARE DETERMINED
· Your interest rate will be based on an index rate plus a margin. Please ask us for our current interest rate and margin. · The "Index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. · Your initial interest rate is not based on the index used to make later adjustments. Please ask us for the amounts of our current interest rate discounts. · For the first year of your loan, your payment will be based on the initial interest rate, loan amount and loan term. After the first year, your payment will be calculated as described below.

	MTA ARM (Initial rate change at 1 month)	MTA ARM (Initial rate change at 3 months)
Your interest rate can change:	On your first payment date and monthly thereafter	On your 3rd payment date and monthly thereafter
Each time your interest rate changes, the new interest rate will equal the sum of the index plus the margin, subject to the following limits:	· Your interest rate will be rounded to the nearest 1/8%. · Your interest rate will never exceed the maximum set forth in your loan documents. The maximum rate in effect as of the first business day of January 2005 is 9.95%. Please ask us for our current maximum rate.	
	How Your Payment Can Change	
Your payment can change:	· Every year and can increase or decrease substantially based on changes in the interest rate. · At the 5th or 10th Payment Change Date (depending on the loan program you select), and on every 5th Payment Change Date after that, the Minimum Payment will be the Full Payment until the next Payment Change Date.	
	You will be notified in writing at least 25, but no more than 120 days, before the due date of a payment at a new level. This notice will contain information about the index, your interest rates, payment amount and loan balance.	

10538962

Your payment will be calculated as follows:	Beginning with the 13th payment and every 12 months thereafter, we will calculate the amount of the monthly payment that would be sufficient to repay the unpaid principal balance in full by the maturity date in substantially equal payments at the interest rate in effect during the month preceding the payment change date. This payment is called the "Full Payment." Except as otherwise provided, your "Limited Payment" will be the payment amount for the month preceding the payment change date increased by no more than 7.5% ("Payment Cap"). Your new "Minimum Payment" will be the lesser of the Limited Payment and the Full Payment. You also have the option to pay the Full Payment for your monthly payment. If you pay less than the Full Payment, then the payment may not be enough to cover the interest due, and any difference will be added to your principal balance. **This means the balance of your loan could increase. This is known as "negative amortization."** During the loan term, we may provide you with other monthly payment options that are greater than the Minimum Payment ("Payment Options"). Please ask us about these Payment Options.	
The unpaid principal of your loan:	Can never exceed 115% (110% in New York) of the original amount borrowed. This means that your monthly payment may change more frequently than annually and the payment change will not be limited by the 7.5% Payment Cap. The new Minimum Payment will be in an amount that would be sufficient to pay off the unpaid principal balance over the remaining life of the loan at the current interest rate.	
	The examples below illustrate interest rate and payment changes based on a $10,000, 30-year loan. These examples use an initial interest rate in effect for a 30 year loan on the first business day of January 2005, and assume the maximum periodic increases in rates and payments. This program may also be available with a 40 year term.	
	Examples of loans with a discounted interest rate (below sum of index and margin)	
Initial Interest Rate	1.00%	1.75%
Maximum Interest Rate	9.95%	9.95%
First Year Payment	$32.16	$35.72
Maximum Payment	$101.46 in the 3rd year	$102.14 in the 3rd year
	Examples of loans with a premium interest rate (above sum of index and margin)	
Initial Interest Rate	N/A	N/A
Maximum Interest Rate	N/A	N/A
First Year Payment	N/A	N/A
Maximum Payment	N/A	N/A

NOTE: To see what your payment would be, divide your mortgage amount by $10,000, then multiply the monthly payment by that amount. (For example, the monthly payment for a 30 year $60,000 MTA ARM Index - Payment Cap loan with a discounted interest rate would be: $60,000 / $10,000 = 6; 6 x $32.16 = $192.96 per month).

- BORROWER - DOREEN E. CHRISTIAN - DATE -

FEDERA TRUTH-IN-LENDING DISCLOSU. STATEMENT

Date: SEPTEMBER 11, 2006
Lender: AMERICAN STERLING BANK, A MISSOURI CORPORATION
Borrower(s): DOREEN E. CHRISTIAN
Property Address: 2532 LUCIERNAGA STREET, CARLSBAD, CA 92009

CHRISTIAN
Loan #: 10538962
MIN: 100046900000448923

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS
The cost of your credit as a yearly rate	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf	The amount you will have paid after you have made all payments as scheduled.
7.842%	$1,227,797.55	$646,860.54	$1,874,658.09

You have the right to receive at this time an Itemization of the Amount Financed.
☒ I want an Itemization. ☐ I do not want an Itemization.

Payments: Your payment schedule will be:

Number of Payments	Monthly Payments of*	Payments are Due Monthly beginning:	Number of Payments	Monthly Payments of	Payments are Due Monthly beginning:
12	2,090.66	NOVEMBER 1, 2006			
12	2,247.46	NOVEMBER 1, 2007			
12	2,416.02	NOVEMBER 1, 2008			
9	2,597.22	NOVEMBER 1, 2009			
314	5,619.79	AUGUST 1, 2010			
1	5,619.37	OCTOBER 1, 2036			

Assuming the index remains unchanged for the life of the loan. The index used to calculate the APR is 4.664%.

☐ **Demand Feature:** This loan has a demand feature
☒ **Variable Rate:** Disclosures about the variable rate feature have been provided to you earlier.
☐ **Variable Rate** Not Applicable

Security: You are giving a security interest in the property located at 2532 LUCIERNAGA STREET, CARLSBAD, CA 92009.

Late Charge: If a payment is not received by the end of 15 days after the date it is due, you will be charged:
☐ ________% of the overdue payment
☒ 5.000% of the overdue payment of principal and interest (or interest if your payment consists only of interest)
☒ not less than U.S. $ 5.00 and not more than U.S. $ N/A

Filing Fees/Recording Fees: $100.00

Prepayment: If you pay off this loan early, you ☒ may ☐ will not have to pay a penalty, and you ☐ may ☒ will not be entitled to a refund of part of the finance charge. ☐ If you pay off an FHA insured loan, on a date other than the regular installment date, you may be assessed interest charges until the end of the month.

Assumption: Someone buying your home
☐ will not be allowed to assume the remainder of this mortgage on the original terms.
☒ may, subject to conditions, be allowed to assume the remainder of this mortgage on the original terms.

Required Deposit: If lender requires you to maintain a deposit as a condition of the loan, the annual percentage rate does not reflect the effect of the requirec deposit.

Property Insurance is required to obtain credit and may be obtained from anyone you want who is acceptable to this Lender.
☐ Property Insurance is not available through Lender.
☐ If you obtain Property Insurance from ____________________________, you will pay $__________ for a term of __________.

CREDIT LIFE AND DISABILITY INSURANCE are not required to obtain credit and will not be provided at the time of closing. You may be offered these plans after closing, but they are not in effect at this time. No such insurance will be in force until you have completed an application, the insurance company has issued the policy, and the effective date of that policy has been provided.

See your loan documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepaymen refunds and penalties.

*Note: The Payments shown above include reserve deposits for Mortgage Insurance (if applicable), but exclude Property Taxes and Insurance.

I/we acknowledge receipt of a completed copy of this disclosure. SIGNED AND DATED:

____
- BORROWER - DOREEN E. CHRISTIAN - DATE -

Countrywide
HOME LOANS

Account Number 145859018

Statement date
04/02/2007

Property address
2532 Luciernaga Street

Can we help? Visit us at **customers.countrywide.com**

MONTHLY HOME LOAN STATEMENT

0079803 [illegible]
DOREEN E CHRISTIAN
2532 Luciernaga St
Carlsbad CA 92009-5819

How Your Loan Amount Can Change

If your Minimum Payment is less than the Interest Only Payment

- Your monthly Minimum Payment will not be enough to cover the interest due
- The interest due, which is not covered by your Minimum Payment, is known as Deferred Interest and will be added to the amount you owe on your loan. Your Principal balance will then increase which is known as "Negative Amortization"
- Negative Amortization results in reducing the amount of equity you have in your home. Negative Amortization should be managed carefully, so that you are not surprised by significant increases in future Minimum Payments

Countrywide is required by law to inform you that this communication is from a debt collector.

Your Monthly Home Loan Statement

Snapshot of your Home Loan as of April 02, 2007

Type of Loan	30 Yr Conv Jumbo PayOption ARM
Current Principal Balance	$659,958.70
Original Loan Amount	$650,000.00
Maximum Limit (see explanation at bottom of page)	115.00%
Margin	3.200%
Interest Rate this Month	8.250%
Remaining Term	29 Years, 6 Months

Payment Due Date: May 1, 2007
Late Payment Charge: $104.53 if payment is not received by **May 16, 2007**

Your Payment Options this Month

The amounts listed below are total payments, including amounts collected for escrow items such as taxes and insurance premiums

Payment Options	Total Payment	Deferred Interest	Principal/ Interest Owed	Outstanding Late Charges**	Escrow	Optional Products***	TARP
Option 1 Amortized Payment	$4,977.50		$4,977.50				
Option 2 15-Year Amortized Payment	$6,615.02		$6,615.02				
Option 3 Minimum Payment	$2,090.66	-$2,446.62*	$4,537.28				
Option 4 Interest Only Payment	$4,537.28		$4,537.28				

Please note: Amounts above are estimates and may change based on payments made
*Negative amounts (-) (minus sign) shown in the deferred interest column are added to the principal balance. This results from making a Minimum Payment that is less than the interest due
**Outstanding late charges up to $400.00 are reflected in the payment option amount

You may now qualify for up to $100,000 at a FIXED RATE![1]

Call 1-888-548-0586 now to apply for quick, convenient access to your available home equity. You may be able to:
- Pay off higher-interest-rate credit **card debt[2]**
- Help handle the high cost of **college tuition**
- Add a room, remodel or make other **home improvements**
- Pay unexpected medical bills or **unanticipated expenses**

Call your Personal Loan Consultant now, toll-free, at 1-888-548-0586, then press 3.
5am-8pm (Mon-Fri) and 6am-5pm (Sat & Sun) PST
Or visit www.mycountrywideoffers.com/myheloc.

[1]Home Equity Loan amounts range from $7,500 to $500,000. Rates and terms are current as of MAIL DATE (04/01/2007) and are for single family owner-occupied primary residence, 80% or less combined loan to value with a FICO score of 700 or greater, a minimum loan amount of $15,000, fixed interest rate of [illegible] APR for 30 years. The Prime Rate as of 03/02/2007 is 8.25%. Example program assumes borrower pays two and a half points and regular closing costs ranging from $500 to $2,500 depending on the size of the loan and property location. Two and a half points is 2.50% of the loan amount (e.g. $2,500 on a $100,000 loan). Loan program based upon no pre-payment penalty (PPP) option. PPP, if applicable, is triggered if property owner sells or refinances the property during the PPP period. For some states, PPP option is available and different rates and terms will apply. Contact your Countrywide Personal Loan Consultant for more details. PPP option not available in AK, AR, CO, IL, [illegible], MS, ME, MD, MN, NJ, NM, NC, OK, SC, TX, UT, VT, VA, WA, WV or WY. Additional restrictions may apply. Rates, terms and program subject to change. For those who do not qualify for this promotional offer, other rates and terms may be available. Property valuation used to estimate potential home equity based on statistical data is not an appraisal and should not be relied on for any purpose other than possible loan qualification. [2]Taking out a home equity loan or line of credit may increase the total number of monthly payments and the total amount paid when compared to your current situation. [illegible]

Maximum Limit - Per your loan documents, the Maximum Limit is the maximum amount your loan can grow to before you are required to make the Full Payment. If you reach the Maximum Limit, your Minimum Payment will increase to the amount sufficient to repay your unpaid principal balance in full on the Maturity Date in substantially equal payments at the then current interest rate

Can we help? \ ; at customers countrywide.com

Your Home Loan Activity this Month

			Breakdown of Payments and Other Amounts							
Date	Description	Amount	Principal/ Deferred Interest*	Interest	Additional Principal	Escrow	Late Charges	Optional Products You Requested	Buy-down Assistance	Unapplied
03/29/2007	April payment	$2,090.66	-$2,361.89	$4,452.55						
	**Ending balance		$850,868.10							

*Amounts preceded by a (-) sign have been added to the principal balance.

**Please note The ending principal balance shown above may not be the amount required to pay off your loan For payoff information, you may use our 24-hour automated information system Call 1-800-669-5833

*Pre-Payment Penalty In accordance with your loan agreement, if you choose to prepay the principal or pay off the loan in full, before the expiration date of the Pre-Payment Penalty you will be required to pay the fee which will be due and payable and cannot be waived. Please review your loan agreement for the expiration date amount and terms of the Pre-Payment Penalty

Mortgage-Related Expenses You're Responsible for Paying

Type of Payment	Who Receives the Payment	Your Policy Number or Tax ID	Frequency of Payment	Next Payment Due	Amount Due
Homeowners insurance	Interins Exch of The Auto Club	CH0003087065	Annual	11/21/2007	$860.00

NOTICE BOARD

Payments

We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law

All accepted payments of principal and interest will be applied to the longest outstanding installment due, unless otherwise expressly prohibited by law.

The New Seller's and Buyer's Advantage

If you are looking for a new home, Countrywide® wants to help you To learn more about the variety of resources we offer visit **www.countrywide.com** or call **1-800-519-9832**.

Want more flexibility? Countrywide's online payment service, **MortgagePay on the Web**, allows you to make your payments around the clock. Visit **customers.countrywide.com** and check out the demo to see just how easy it is.

TO CONTACT US

CREDIT REPORTING NOTICE

We may report information about your account to credit bureaus Late payments, missed payments or other defaults on your account may be reflected in your credit report

For up-to-the-minute information about the account, use our 24-hour automated information system. To ask us about this statement or account information, call **1-866-653-6183** Monday-Friday, 6AM-5PM Pacific Time Calls may be monitored and/or recorded for service quality purposes. *Se habla español.* 1-800-295-0025

Please have the account number available when you call.

Or write to us at:
The address for general inquiries and all RESPA Qualified Written Requests is. Countrywide Home Loans, Attn
Customer Service SVB-314 P O Box 5170, Simi Valley, CA 93062-5170

Tax Dept SV-24 P O Box 10211, Van Nuys CA 91499-6089
Insurance Dept P.O. Box 961206, FTWX 22 Fort Worth, TX 76161-0206
Payments, Attn Remittance Processing
P O Box 10219, Van Nuys, CA 91410-0219
Overnight deliveries 400 Countrywide Way, Simi Valley, CA 93065
Our website customers countrywide com
Your account information is available in Spanish on the site mentioned above

Equal Housing Lender © 2007 Countrywide Home Loans, Inc 4500 Park Granada Calabasas CA 91302 Trade/service marks are the property of Countrywide Financial Corporation and/or its subsidiaries
Licensed by the Department of Corporations under the California Residential Mortgage Lending Act

0079803 01732 3

OPTION 1
Amortized Payment (principal and interest) - based on your remaining term

The amount necessary to pay the loan off (principal and interest) at the maturity date, in substantially equal payments (unless your loan has a balloon payment due on the maturity date). Under the terms of your Note, this payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term of your loan

Account number 145859018 (7)
Doreen E Christian
2532 Luciernaga Street
Carlsbad, CA 92009

Payment due **May 1, 2007** **$4,977.50**
After **May 16, 2007** late payment **$5,082.03**
Please update e-mail information on the reverse side of this coupon.

Additional Principal
Additional Escrow
Other
Check total

Countrywide
PO BOX 10219
VAN NUYS CA 91410-0219

14585901870000049775000050820 3

OPTION 2
15-Year Amortized Payment (principal and interest)

The amount necessary to pay the loan off (principal and interest) within a 15-year term from the first payment due date, in substantially equal payments (unless your loan has a balloon payment due on the maturity date). Under the terms of your Note, this payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term of your loan

Account number 145859018 (7)
Doreen E Christian
2532 Luciernaga Street
Carlsbad, CA 92009

Payment due **May 1, 2007** **$6,515.02**
After **May 16, 2007** late payment **$6,619.55**
Please update e-mail information on the reverse side of this coupon.

Additional Principal
Additional Escrow
Other
Check total

Countrywide
PO BOX 10219
VAN NUYS CA 91410-0219

145859018700000651502000661955

OPTION 3
Minimum Payment
Important: If this amount is less than the Interest Only, paying this will not be enough to pay all of the interest due, will not reduce your principal, and the unpaid interest will be added to your principal. This is called "negative amortization", meaning the amount you owe increases. You will be charged interest on the entire principal. Negative Amortization will reduce the equity you have in your home. Negative Amortization should be managed carefully, so that you are not surprised by significant increases in future Minimum Payments

Account number 145859018 (7)
Doreen E Christian
2532 Luciernaga Street
Carlsbad, CA 92009

Payment due **May 1, 2007** **$2,090.66**
After **May 16, 2007** late payment **$2,195.19**
Please update e-mail information on the reverse side of this coupon.

Additional Principal
Additional Escrow
Other
Check total

Countrywide
PO BOX 10219
VAN NUYS CA 91410-0219

145859018700000209066000219519

OPTION 4
Interest Only Payment

You pay only the interest charged on your loan for the previous month. By making an Interest Only Payment, you will avoid negative amortization, but no portion of the payment will be applied to reduce the principal balance of your loan.

Account number 145859018 (7)
Doreen E Christian
2532 Luciernaga Street
Carlsbad, CA 92009

Payment due **May 1, 2007** **$4,537.28**
After **May 16, 2007** late payment **$4,641.81**
Please update e-mail information on the reverse side of this coupon.

Additional Principal
Additional Escrow
Other
Check total

Countrywide
PO BOX 10219
VAN NUYS CA 91410-0219

145859018700000453728000464181

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED 08 JAN 15 PM 3:23 CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY: DEPUTY

I. (a) PLAINTIFFS

DOREEN E. CHRISTIAN, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff: San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Marcus Jackson, Esq. 751 Center Dr., Suite 108-456 San Marcos, CA 92069 (760) 291-1755

DEFENDANTS

AMERICAN STERLING BANK and DOES 1 through 10 inclusive

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
'08 CV 0090 LAB RBB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☒ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Violation of Truth in Lending Laws, 15 USC Section 1601, et seq.

Brief description of cause:
Class action for violation of Truth in Lending Laws and unfair business practices relating to adjustable rate loans.

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ unspecified

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE 1/15/08

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 146470 AMOUNT $350 1/15/08 BH APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 146470 - BH

January 15, 2008
15:20:25

Civ Fil Non-Pris

USAO #.: 08CV0090 CIVIL FILING
Judge..: LARRY A BURNS
Amount.: $350.00 CK
Check#.: BC# 1079

Total-> $350.00

FROM: CHRISTIAN V. AMERICAN STERLING
BANK ET AL
CIVIL FILING